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DOCUMENTS DEPARTMENT

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CITY AND COUNTY OF SAN FRANCISCO

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MAYOR'S OFFICECITY ATTORNEY
CITY HALL

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SAN FRANCISCO

February 27, 1947

Honorable Roger D. Lapham
Mayor
City Hall
SAN FRANCISCORe: Annual Report of the City Attorney's
Office for 1946 and Contemplated
Work for 1947

Dear Mayor Lapham:

The following is a tabulation of the number of cases filed against the City and County and broken down into departments:

Number of Claims received during the calendar year 1946:

Municipal Railway	1337
Other departments	227
Total	1564 Claims

Number of Cases actually filed against the City of San Francisco during the calendar year 1946

739 Actions

Municipal Railway	491
Superior Court	285
Municipal Court	204
U.S. District Court	2
V. J. Day Riots	98
Sheriff's Office	2
Civil Service Commission	4
Tax Cases (Refunds)	9
Retirement Office (Subrogations)	7
Park Commission (Personal Injury)	3
Federal Housing Projects (Personal Injury)	3
Board of Education (Personal Injury)	9
Department of Electricity	2
Fire Department (Personal Injury)	1
Recreation Department (Personal Injury)	1
Opera House (Personal Injury)	2
Department of Public Health	8
Department of Public Works (Defective Streets)	17
Purchaser of Supplies (Personal Injuries)	2
Filing liens for Retirement Board	15
Mandamus actions against Retirement Board	1
Abatement of Nuisances (Department of Health)	7
Eminent Domain Actions (Property Department)	6
Injunctions Prosecuted	2
Quiet Title Actions (McEnerny Actions)	47
Public Welfare	1
Police Department	1

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CITY AND COUNTY OF SAN FRANCISCO

CITY ATTORNEY
CITY HALL

Hon. Roger D. Lapham

-2-

Feb. 27, 1947

As I know you are particularly interested in the operation of the Municipal Railway, the following is a tabulation showing the number of cases handled by this office and arising out of the conduct of the railway from September 29, 1944 to December 31, 1946:

MUNICIPAL RAILWAY CASES

TOTAL CASES RECEIVED FOR ACCIDENTS INVOLVING THE
MUNICIPAL RAILWAY FROM SEPTEMBER 29, 1944, TO
DECEMBER 31, 1946.

	TOTAL	1104
Municipal Court	451	
Superior Court	653	

From September 29, 1944, the following disposition of cases was had up to and including December 31, 1946:

Cases tried in Superior Court	64
Cases tried in Municipal Court	59
Cases tried in Small Claims Court	22
Cases settled	204
Total	329

From January 1, 1946, to and including December 13, 1946:

Cases tried in Superior Court	79
Cases tried in Municipal Court	63
Cases settled	185
Cases tried in Small Claims Court	19
Total	346

Cases dismissed for lack of prosecution	16
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Grand total of all cases handled 691

In addition to the foregoing, this office has during the calendar year 1946 rendered 158 written opinions to the various departments of the City government.

There have been innumerable contracts, leases and bonds

CITY AND COUNTY OF SAN FRANCISCO

CITY ATTORNEY

CITY Hon. Roger D. Lapham

-3-

Feb. 27, 1947

drawn and approved, and oral opinions given to the heads and many members of all departments in the City government, including the Board of Supervisors.

The greatest achievement of the office during the year 1946 was the recovery of \$688,751 from the Market Street Railway and the State of California. This money you will recall is the result of the difference between the 6¢ and 7¢ fare charged by the Market Street Railway prior to consolidation and which difference the Supreme Court ordered impounded until the litigation brought by Market Street Railway was finally terminated. The Court made an order that the impounded money at the end of the litigation should be paid to the State of California. We petitioned the Supreme Court to rescind this order and make the money payable to the City and County. Contrary petitions were filed by the State of California and the Market Street Railway. We were successful in having the California Supreme Court change its order and direct the payment of the money to the City. The Market Street Railway twice applied to the United States Supreme Court to have the order set aside, without success.

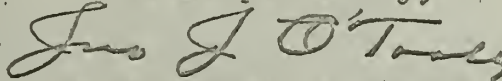
During the year we have filed 43 suits in the name of the City against various defendants, that include eminent domain actions, subrogation claims from the Retirement Board, quiet title actions, license taxes and some suits to recover moneys from persons who had improperly received aid from the Welfare Department.

PROGRAM FOR 1947

We will continue to try all suits as they are called for trial and maintain the policy in effect throughout the years of not seeking continuance when taxpayers are asserting rights against the City and a case has been set for trial. We will also answer all requests for opinions as quickly as they may properly be answered.

Our main difficulty in this office is to have adequate space so that we may provide our attorneys proper offices in which to do their work. You are aware of the requests made to Mr. Brooks concerning this, and if we are allowed the required space I feel we will be able to more expeditiously and efficiently carry out the duties of this office during 1947.

Yours respectfully,



JOHN J. O'TOOLE
City Attorney

CITY AND COUNTY OF SAN FRANCISCO

CITY ATTORNEY
CITY HALL

September 21, 1948

The Honorable Elmer E. Robinson
Mayor
City Hall
SAN FRANCISCO

Dear Mayor:

Pursuant to your request that I report to you the activities of this office for the fiscal year 1947-48, I respectfully submit the following facts:

As you are aware, the work of the office is divided into two departments, the strictly municipal work and that relating to legal affairs arising out of the City in its proprietary capacity.

In the latter group the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department during the last fiscal year:

Lawsuits pending June 30, 1947	701
--------------------------------	-----

" " June 30, 1948	671
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Lawsuits filed June 30, 1947 to June 30, 1948	275
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Lawsuits tried, settled and dismissed:

(a) June 30, 1947 to Dec. 31, 1947	147
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(b) Jan. 1, 1948 to July 1, 1948	203
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Total	353
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Petitions and Orders of Compromise for Minors	67
--	----

Trial work for all departments other than the Municipal Railway is illustrated by the following table:

Claims filed in this office	203
-----------------------------	-----

Suits filed:

(a) June 30, 1947 to Dec. 31, 1947	78
------------------------------------	----

(b) Jan. 1, 1948 to July 1, 1948	65
----------------------------------	----

(c) McEnerney Actions (Quiet Title)	37
-------------------------------------	----

Total	180
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CITY AND COUNTY OF SAN FRANCISCO

CITY ATTORNEY
CITY HALL

Hon. Elmer E. Robinson
Page 2, Sept. 21, 1948

Lawsuits tried, settled and dismissed:

June 30, 1947 to July 1, 1948	49
Mandamus Actions tried	14
Injunctions tried	<u>4</u>
Total	67

To summarize the above, the total number of suits tried, settled or dismissed throughout the fiscal year was 420.

For all departments of the City government formal opinions were written from June 30, 1947 to December 31, 1947 totaling 67 and from January 1, 1948 to June 30, 1948, 108, or a total for the fiscal year of 175. In addition to the written opinions throughout the year many oral opinions were given to the heads of all departments of the City government and, daily, advice is given to heads of departments and members thereof.

Innumerable contracts are prepared that cover all activities of the City. Many leases are prepared for the Water Department embracing its agricultural and other properties, and many other leases are prepared for other departments.

An all-important series of suits totaling approximately 60, affecting the water rights of the City, are pending in Stanislaus, San Joaquin and Tuolumne counties. Some of these actions pray that the City be restrained from taking any water from the Tuolumne River and some seek damages for the drying of springs and wells caused by the construction of the Hetch Hetchy Tunnel. Some of these actions are subject to dismissal for lack of prosecution but the more-important ones are kept alive by stipulating as to the time of trial.

At your request Mr. Holm of this office was detailed during the last half of the fiscal year to appear at the Joint Hearings before the Committees on the Judiciary in the Congress of the United States and present the City's case in its endeavor to have legislation passed by Congress that would clear title to tide, submerged and reclaimed lands within the City limits and the major portion of the lands comprising the airport in San Mateo County.

During the past fiscal year there have been 10 bond issues prepared and submitted to the voters. During the first half of the fiscal year 6 were submitted and authorized by the voters. During the last half of the fiscal year 4 bond issues were submitted, 2 of which passed—Sewage Treatment and Juvenile Court and Detention Home Bonds.

CITY AND COUNTY OF SAN FRANCISCO

CITY ATTORNEY
CITY HALL

Hon. Elmer E. Robinson

Page 3, Sept. 21, 1948

The School Bonds and California Cable Purchase Bonds were not authorized by the voters.

The legal work arising out of the purchase of new equipment for the Railway and the completion of eminent domain actions filed in behalf of the Airport, with leases and contracts covering construction of the latter, required a very substantial amount of time. Many condemnation suits for land required for the Airport have been filed but remain to be tried.

It has been my endeavor to avoid the many details of activities in this office for the fiscal year but to give you a general summarization. If there are any specific figures and facts that you desire, please advise me and they will be furnished.

Yours respectfully,

JOHN J. O'TOOLE
City Attorney

DEPUTY CITY ATTORNEYS

A. DAL THOMSON
PUBLIC UTILITIES COUNSEL
WALTER A. DOLD
CHIEF DEPUTY CITY ATTORNEY
EDMOND P. BERGEROT
CHIEF TRIAL DEPUTY
SYLVAIN D. LEIPSIC
REYNALD J. DIANCHI
NORMAN SANFORD WOLFF
WALKER PEDDICORD
VIRL BENNEHOFF

DION R. HOLM
CITY ATTORNEY
CITY HALL
SAN FRANCISCO 2, CALIFORNIA
HEMLOCK 1-1322

September 12, 1949

DEPUTY CITY ATTORNEYS

C. WESLEY DAVIS
JOSEPH F. MURPHY
LAWRENCE S. MANA
BERNARD J. WARD, JR.
EDWARD I. FITZPATRICK
JACK G. MCBRIDE
GEORGE E. BAGLIN
THOMAS J. BLANCHARD
THOMAS M. O'CONNOR
WILLIAM F. BOURNE
EDWARD F. DULLEA
JOHN ELMER BARRICKLO
DONALD J. KROPP
LOUIS T. KRUGER

PAUL L. BECK
CHIEF VALUATION AND
RATE ENGINEER

THOMAS J. O'TOOLE
CHIEF LAW CLERK

The Honorable Elmer E. Robinson.
Mayor of San Francisco
City Hall
San Francisco, California

Dear Mayor:

In complying with your request that I report to you the activities of the office of City Attorney for the fiscal year 1948-49, I wish first to note the fact that I report to you for the period until March 1, 1949 on behalf of former City Attorney John J. O'Toole, who retired on that date with high honor after 23 years of efficient and arduous service to San Francisco as its City Attorney. In this office Mr. O'Toole dealt ably with the innumerable legal problems arising, in both peace and war, in a period including as well the problems of both economic depression and dynamic municipal growth.

Through your appointment, I have succeeded to that office after 23 years of service in all departments of it. I do so with determination to systematize to even greater degree the operations of the office to care for the increased legal load of the various city departments with a maximum of efficiency and dispatch. The report following will show that during the last fiscal year there has been an increased execution of work in this office in many respects.

As you are aware, the work of the office is divided into two departments, the strictly municipal work and that relating to legal affairs arising out of the City in its proprietary capacity.

In the latter group the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department during the last fiscal year:

Actions filed	332
Actions tried, settled or dismissed	399
Actions pending at end of fiscal year	676
Compromises approved by court of claims of minors.	29
Claims filed	936

It is to be noted that the number of actions disposed of during the year by trial, settlement, or dismissal, is about 12 $\frac{1}{2}$ % in excess of the preceding fiscal year.

Representation was also given to numerous street car and bus operators at coroner's hearings and hearings in the criminal division of the Municipal Court where facts involved in the proceedings were related to substantial damage actions against the City and County.

Trial work for departments other than the Municipal Railway is illustrated in the following table:

Actions filed	183
McEnerney actions filed and determined	44
Actions in eminent domain filed respecting 110 parcels of real property	
Actions tried, settled, or dis- missed exclusive of McEnerney actions, eminent domain actions or special proceedings	133
Claims filed against all Departments other than Municipal Railway, viz: Public Works, Police, Fire, Health, Recreation, Park, Educa- tion, Director of Properties	409
Mandamus Proceedings tried	19
Proceedings in Prohibition tried	1
Proceedings for Declaratory Judgments	2

Writs of Review (Workmen's Compensation) tried	5
Industrial Accident proceedings tried	97

It is to be noted that the total of non-railway actions tried, settled or dismissed during the current fiscal year is considerably more than twice the number disposed of during the preceding year.

The proceedings in eminent domain above referred to were nearly all in relation to property needed for school purposes and represent for the most part the activation of the school program authorized by the electorate in the bond election of the preceding year.

More than 50 proceedings in eminent domain initiated by the Federal or State governments were also settled or otherwise disposed of during the fiscal year.

Numerous claims were made against the State for reimbursement of Public Welfare Aid. A number of legal actions were prosecuted for this purpose also.

Compromises of a considerable number of claims of minors were made and approved by the Court.

Railway damage actions filed against the City and County during the last fiscal year total in the amounts prayed for, the sum of \$12,869,597.02.

The prayers of complaints in actions filed on matters other than related to the railway total for the last fiscal year, the sum of \$2,054,900.81.

For all departments of the City government 117 formal opinions were written during the last fiscal year. In addition to the written opinions, throughout the year many oral opinions were given to the members of all departments of the City government and daily advice was given to members of departments and heads thereof. The City Attorney or his deputy sits regularly as an adviser with the Board of Supervisors at its meetings and at numbers of its committee meetings; with the Retirement Board as a member; with the Police Commission in the occasions of important hearings and frequently with numbers of other Boards and Commissions of the City and County.

Innumerable contracts are prepared that cover all activities of the City. Many leases are prepared for the Water Department comprising its agricultural and other properties. Many other leases are prepared for other departments

Extensive litigation affecting the water rights of the City pending in Stanislaus, San Joaquin and Tuolumne Counties is being conducted by this office. Some of these actions pray that the City be restrained from taking any water from the Tuolumne River and some seek damages for the drying of springs and wells caused by the construction of the Hetch Hetchy Tunnel.

Numerous appearances have been made on behalf of the City and County and its rate payers in proceedings before the State Public Utilities Commission opposing reductions of telephone, gas and electric rates and interurban rates on routes originating or terminating in San Francisco. Appearance was also made before the State Bureau of Milk Control urging a reduction in the price of milk. The order of the Bureau at the conclusion of the hearing was for a reduction of one cent per quart in the retail price.

During the past fiscal year there have been six bond issues prepared and submitted to the voters. The Hall of Justice, Butano Forest, Library and Convention Center bond issues failed to obtain the necessary two-thirds majority. Although the school bond issue on the ballot of June 1, 1948 in the sum of \$87,000,000 failed, the bond issue in the smaller amount of \$48,890,000 on the ballot in the election of November 2, 1948, was authorized by the voters as was the airport bond issue in the sum of \$8,600,000.

There has been considerable work done by this office with reference to the preparation of proceedings for the bond issue for the development of the Cherry Valley Project, which will be on the ballot in the coming November election.

We have reviewed a series of contracts by the City and County of San Francisco on the one hand, the Turlock and the Modesto Irrigation Districts on the other hand and likewise contracts which have been several times redrafted by the United States Government on the one hand and the two irrigation districts and the City and County of San Francisco on the other hand.

The City and County of San Francisco is a defendant in the case entitled United States of America v. City and County of San Francisco, involving claimed expense in the maintenance of roads and trails in Yosemite National Park. An agreed statement of facts has been prepared by us and submitted to counsel for the Government who, thus far, have not formally signed the document, although they have indicated that it is satisfactory.

The Honorable Elmer E. Robinson
September 12, 1949
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This office had a complicated problem relating to the removal of the facilities of the P. G. & E. Co., in the vicinity of the sewage treatment plant now being erected on Bay Street near the Embarcadero. After a considerable legal discussion, together with numerous conferences, the P. G. & E. Co., yielded to the demands of the City.

By reason of defective electrical equipment, the final payment on the coaches manufactured by Twin Coach Company created a somewhat complicated legal problem which was finally solved by agreement.

The litigation instituted by the City and County of San Francisco v. County of San Mateo, with respect to taxes on the airport, was recently argued and will presently be submitted to the Court when supplemental briefs are filed.

This office has been concerned to a considerable extent with a proposed contract between Southern Pacific Company and the City through its Water Department, which contemplates supply of water to an industrial area, partly in San Mateo and partly in San Francisco, adjacent to the Bay Shore Highway, which industrial area is being developed by the Southern Pacific Company. The contract has been meticulously drafted and there is little doubt but that it will be presently executed.

A deputy of this office was assigned to attend the Legislature with the City's legislative representative during its general session in the first half of the year 1949. Report has already been made to you in greater detail of the assistance of this office in the opposition of bills opposed by the City and in the support of bills favored by the City and a summary of all bills in any way affecting the City.

At the solicitation of the State of California, the Public Utilities Commission approved a revocable license agreement drawn by this office so as to incorporate roads and trails on our water lands in San Mateo County as part of the trail system of the State of California.

It has been my endeavor to avoid the many details of activities in this office for the fiscal year but to give you a general summarization. If there are any specific figures and facts omitted from this report that you desire please advise me and they will be furnished to you.

Yours very respectfully,

Dion R. Holm

DION R. HOLM
City Attorney

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PUBLIC UTILITIES COUNSEL

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LAWRENCE S. MANA
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DION R. HOLM
CITY ATTORNEY
CITY HALL
SAN FRANCISCO 2, CALIFORNIA
HEMLOCK 1-1322

September 15, 1950

DEPUTY CITY ATTORNEYS

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DONALD J. KROPP
LOUIS T. KRUGER
CLAYTON W. HORN

PAUL L. BECK
CHIEF VALUATION AND
RATE ENGINEER

THOMAS J. O'TOOLE
CHIEF LAW CLERK

Hon. Elmer E. Robinson
Mayor of San Francisco
City Hall
San Francisco 2, California

Dear Mayor:

I respectfully submit the following as my report to you of the activities of the office of City Attorney, for the fiscal year 1949-50. In doing so it has been my endeavor to avoid details in respect to the manifold activities of this office and to give you, so far as possible, a general summary of the services rendered. The work of the office is divided generally into that which is of a strictly municipal character and that relating to legal affairs arising out of the activities of the City in its proprietary capacity. In the latter group, the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department in the field of litigation during the last fiscal year:

Actions filed	325
Actions tried, settled or dismissed	291
Actions pending at end of fiscal year	773
Compromises approved by court of claims of minors	36
Claims filed	830

In addition to the foregoing, 402 non-litigated cases, in excess of \$100, were settled by the Public Utilities Department after the rendition of services in regard thereto by this office. In respect to each of these claims, a review was made in this office and advice given as to settlement. Written approval of the settlement was given to the Public Utilities Commission and to the Controller, releases and other closing documents were also approved in each instance. These claims related to the following departments:

Hon. Elmer E. Robinson

Page two.

Municipal Railway	370
Water Department	31
Municipal Airport	<u>1</u>
Total	402

Representation was also given to numerous street car and bus operators at coroner's hearings and hearings in the Criminal Division of the Municipal Court where facts involved in the proceedings were related to substantial damage actions against the city and county.

Railway damage actions filed against the city and county during the last fiscal year total in the amounts prayed for, the sum of \$15,750,000. It is to be noted in this regard that, while the number of damage actions filed was slightly less than in the preceding year, the total of the amounts prayed for was approximately 20% in excess of that year. It may be noted also that the number of Railway damage actions tried, settled or dismissed during the last fiscal year was somewhat less than the number disposed of during the preceding year. It may be recalled in this regard that during the latter part of the last fiscal year there were no funds available for settlement of such actions and that a large number of actions were prepared for final settlement as soon as funds were available during the current fiscal year. The figure actually given does not, therefore, reflect fully the very extensive work of this department in that regard. The lack of such funds made it much more difficult, in fact, to settle cases with a real saving to the City than would have been the case had funds for the purpose been readily available at the time.

Trial work for departments other than the Municipal Railway is illustrated in the following table:

Actions filed	248
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These actions were of a character or related to City Departments as indicated below:

Eminent Domain	37
Police Department	26
Public Utilities:	
Airport	3
Water Department	<u>7</u>
	10

Hon. Elmer E. Robinson

Page three.

Fire Department	6
Health Department	4
Public Works Department	62
Sheriff's Office	2
Park Department	6
Retirement Board	16
Subrogation cases	10
Other	<u>6</u>
Civil Service	9
Juvenile Court	6
Mayor	1
Board of Supervisors	2
Recreation Department	4
Unified School District	7
Health Service System	1
Library	1
Housing Authority	2
Tax Collector	6
County Clerk	1

Injunctive Relief Asked of
Various Departments:

Declaratory Relief	6
Mandamus	17
Prohibition	1
Order to Show Cause	4
Injunctions	<u>11</u>

Total 248

McEnery actions filed and determined,
in addition to the foregoing total 37

Actions filed in eminent domain related to a total of 617 parcels of real property. This figure is approximately six times the number of parcels involved in actions filed during the preceding fiscal year. A large number of these result from the School Bond Issue program.

Actions respecting 306 parcels relate to the program or procurement of pipe line

rights in respect to Bay Division Pipe Line No. 3 Hetch Hetchy Water Supply. The parcels extend over a distance of 33.8 miles in Alameda, Santa Clara and San Mateo Counties. Many proceedings in eminent domain initiated by the federal or state governments were also settled or otherwise disposed of during the fiscal year.

Actions tried, settled or dismissed, exclusive of McEnery actions, eminent domain actions or special proceedings	93
Actions pending at end of fiscal year	461
Claims filed against all department, other than Municipal Railway, Public Works, Police, Fire, Health, Recreation, Park, Education, Director of Properties	454
Mandamus proceedings tried	—
Proceedings in Prohibition	—
Proceedings for Declaratory Judgment tried	—
Writs of Review (Workmen's Compensation Cases tried)	4
Industrial Accident proceedings tried	82
Small Claims actions filed and disposed of	45

It may be noted here that while the number of actions filed in the Superior and Municipal Courts is only slightly in excess of the number filed during the preceding fiscal, the total amount prayed for in these actions is approximately double the total of the prayers of such actions filed during the preceding year. In the fiscal year 1948-49 this sum totaled \$2,054,000, whereas in the fiscal year 1949-50 it totaled \$4,006,000.

Numerous claims remain against the State for reimbursement of Public Welfare Aid. A number of legal actions were prosecuted for this purpose also.

An important part of the work of the office consisting of giving of formal written opinions to departments of the City government on the legal phases of City business. The number of such opinions increased from 117 given during the preceding fiscal year to 171 given during the last fiscal year. Of this number for the entire year, 113 were given during the last half of the fiscal year, a striking evidence of the increase in this important phase of the work in the office. In addition to the written opinions, many oral opinions were given throughout the year to the members of all departments of the City government. Daily advice was given to members of departments and heads thereof. The City Attorney or his deputy sits regularly as an adviser of the Board of Supervisors at its meetings and at numbers of its committee meetings; with the Retirement Board as a member; with the Police Commission on the occasions of important hearings and frequently with numbers of other boards and commissions of the city and county.

Following the activation of the Parking Authority of San Francisco in October, 1949, the City Attorney began service as counsel for the Authority. The City Attorney or his deputy has attended 50 meetings, regular, special and informal; has constantly advised the Authority's staff and members on its legal procedure, preparing all legal instruments necessary, opinions, and responding to legal inquiries respecting it before the Board of Supervisors. The same service has been performed for the Redevelopment Agency of San Francisco.

The Rate Department of this office has performed important and extensive service during the past fiscal year. Appearance has been made before the Public Utilities Commission in numerous hearings, the most important were upon the applications of the Pacific Gas and Electric Company for an increase in the electric rates, the Key Transit Company for an increase in transit fares, and the Pacific Greyhound Corporation for an increase in commuter rates. An active part was taken in all these proceedings.

Hon. Elmer E. Robinson

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In addition to the above hearings, this office also participated in hearings before the Public Utilities Commission on the issuance of bonds and common stocks by the larger utilities. Formal hearings were given for 26 days in the Pacific Gas & Electric Company case. The record contains 2800 pages of transcript and 100 exhibits were presented by 31 witnesses.

To do a thorough piece of work in this important phase of the City Attorney's duties, with the small existing staff, has been a monumental task.

The other formal hearings were also spread over several months, consuming the same number of days and having approximately the same number of exhibits and witnesses.

On June 7, 1950, the Pacific Gas & Electric Company made application for an increase in gas rates and on April 14, 1950, the Pacific Telephone & Telegraph Company likewise made an application for an increase in telephone rates.

Innumerable contracts have been prepared by the office of the City Attorney that cover all activities of the City in its proprietary capacity. Some of these are for public work; others are for the engagement of experts; others are for the furnishing of supplies and equipment, under competitive bid. The office of the City Attorney consummated a contract with Colonel Marmion D. Mills, as an expert in transportation advice. Under the head of Special Services, also, a contract was consummated with the J. Walter Thompson Company, a well-known advertising agency, and this concern has furnished its services in the preparation and publication of advertising in the creation of a new and enlarged transportation business by the Municipal Railway. Various leases for the Water Department, comprising agricultural and other properties, are cleared and passed upon in the office of the City Attorney.

Extensive litigation affecting the water rights of the City pending in Stanislaus, San Joaquin and Tuolumne Counties is still being conducted by this office. Some of these actions pray that the City be restrained from taking any water from the Tuolumne River; others seek damages for the drying up of springs and wells alleged to have been caused by the construction of tunnels for the Hetch Hetchy Water Supply into San Francisco, both through the Sierra and the Coast Range.

Careful preparation has been made by this office with reference to bond issues submitted upon the ballot. One of the most important of these is the Cherry Valley Project, which will lead to further development of the City's water rights, as established by the Raker Act.

The office of the City Attorney was also engaged in careful review of all procedures relating to the Airport bonds in the total sum of \$10,000,000, approved by the voters in the last election, contemplating further extensive development of the San Francisco International Airport.

Other bond issues were upon the ballot which also were carefully guarded as to validity by this office. We are gratified to state that the validity of these various issues has recently been passed upon favorably by a well-known law firm in San Francisco, specializing in legal problems concerning bond issues.

It further has been the task of this office to pass upon and expedite various applications to the Federal Government for contributions both for Airport construction in the development of the Cherry Valley Project and for Urban Redevelopment.

There have been many discussions between the management of the Airport, a representative of this office, and the airlines who utilize our Airport, as to the construction of various terms and conditions set forth in leases to certain airlines and as to the interpretation of items set forth both in the Rules and Regulation governing the Airport and in the Schedule of Rates and Charges. Legal issues pertaining to the Airport are still in a pioneer field and we are confident that both the airlines and ourselves seek to resolve any existent controversies in a friendly spirit.

Legal problems pertaining to the Water Department and efforts in court in this same field have occupied considerable time in this office. A most complicated field of effort has been entered, in the condemnation of rights of way for Pipe Line No. 3 from Hetch Hetchy to San Francisco, which takes a route around the upper part of the Bay. Numerous condemnation suits are pending and this office also has been engaged in considerable draftsmanship by which various owners have granted rights of way subject to standard and well recognized terms and conditions.

Hon. Elmer E. Robinson

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Turning to the recently enacted charter amendment by which the Public Utilities Commission was authorized to negotiate for the purchase of the operative properties of the California Street Cable Railroad Company, the City Attorney drafted a contract which he deemed to be in due protection of the interests of the City and, in fact, requisite for such protection. Upon the submission of such contract to the operating heads of that corporation, and its attorney, extreme opposition to the terms so drafted was voiced. However, nothing by way of substitution was ever offered. All that was suggested was that the City should remain trustful of the integrity of the Directors and should assume, in advance, that all tort claims would be completely satisfied. This office is of the opinion that it is an open question, and debatable, whether the City would be obligated to pay, upon acquisition, such tort claims existent against the corporation, as of the date of acquisition. This office is prepared to cooperate in the draftsmanship of reasonable clauses in due protection of the City. To date, nothing has been suggested, other than the vague suggestions hereinabove mentioned.

✓ This office has been busily engaged in the preparation of charter amendments, at the request of the various departments and officials. In recent negotiations with the employees of the Municipal Railway, the Public Utilities Commission agreed that a humanitarian problem is involved requiring immediate solution, in the forced retirement of numerous of the operating personnel upon the Municipal Railway, by reason of conversion of street railway lines to trolley coach or bus lines. It happens that many conductors and motormen are either ruled to be unable, or voluntarily disqualify themselves, from operation of a motor bus or trolley coach in replacement of service upon street cars. This results from age or other disqualification. It has been the thinking of the Public Utilities Commission, communicated to this office, that it is highly unfair, without some financial provision, to sever such men from Municipal employment, by reason of such disqualification, particularly when it is recognized, as indeed it must be, that an overwhelming majority of these men have rendered faithful and constant service upon the Municipal Railway. After considerable study and exploration with the Retirement Board, a charter amendment was drafted on the ballot for November, by which extended liberal provisions on retirement may be made in favor of these men, by ordinance of the Board of Supervisors.

Also, under the head of Working Conditions of employees in the operating personnel of the Municipal Railway, this office was advised that a further term in the settlement of the working conditions upon the Municipal Railway was provision by law by which an employee would be protected, in the event that a claimant for personal injury does not pursue the City itself. It has happened on a number of occasions within the recent past that a person has neglected to file a claim against the City, although sustaining personal injury or property damage, and then has pursued the actual tort-feasor, that is, the operator of the Municipal Railway vehicle. It has been the conclusion of the Public Utilities Commission that, in such circumstances, it is inequitable and unfair that the man himself be so pursued when ordinarily, if the claimant had been duly diligent, his pressure for collection would be confined against the City. This office rendered an opinion to the effect that this problem could not be solved by a charter amendment, but that it properly falls within the field of State legislation. Representatives of the men have been so advised and will doubtless advocate legislation upon this subject. This office has, in general form, furnished the representatives of the employees with draftsmanship of such contemplated and proposed legislation.


Litigation of importance is under submission before the Supreme Court of the State of California, involving taxation by the County of San Mateo upon Airport property. It is the position of the City and County of San Francisco, advocated by the City Attorney, that the County of San Mateo has, in violation of the Constitution, taxed improvements on the Airport by regarding the filled in land upon its value, as thus improved. A Supreme Court decision will doubtless be forthcoming within the immediate future.

Further litigation of importance is pending in the United States District Court, concerning the right of the Federal Government to collect money from the City and County of San Francisco for the maintenance and repair of various roads and trails in Yosemite National Park. It is the position of the City and County of San Francisco, advocated by the City Attorney, that the Federal Government, as a condition of maintaining an action of this character, must tender to the City and County of San Francisco the sum of \$1,250,000 paid by the City some years ago to the Federal Government in supposed settlement of this claim, even though the claim has its foundation in express language of the Rehor Act.

#10

Your own personal knowledge of much of the work of this office will indicate to you the generality of the foregoing report. If there are any specific figures and facts omitted from this report which you desire, please advise me and they will be furnished to you.

Yours very respectfully,


DION R. HOLM
City Attorney

A. DAL. THOMSON
PUBLIC UTILITIES COUNSEL
WALTER A. DOLD
CHIEF DEPUTY CITY ATTORNEY
EDMOND P. BERGEROT
CHIEF TRIAL DEPUTY
SYLVAIN D. LEIPSIG
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NORMAN SANFORD WOLFF
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VIRL BENNEHOFF
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JOSEPH F. MURPHY
LAWRENCE S. MANA
BERNARD J. WARD
EDWARD I. FITZPATRICK

DION R. HOLM
CITY ATTORNEY
CITY HALL
SAN FRANCISCO 2, CALIFORNIA
HEMLOCK 1-1322

September 17, 1951

JACK G. MCBRIDE
GEORGE E. BAGLIN
THOMAS J. BLANCHARD
THOMAS M. O'CONNOR
WILLIAM F. BOURNE
EDWARD F. DULLEA
JOHN ELMER BARRICKLO
DONALD J. KROPP
LOUIS T. KRUGER
CLAYTON W. HORN
THOMAS A. MOONEY, JR.
PAUL L. BECK
CHIEF VALUATION AND
RATE ENGINEER

Hon. Elmer E. Robinson
Mayor of San Francisco
City Hall
San Francisco 2, California

Dear Mayor:

I respectfully submit the following as my report to you of the activities of the office of City Attorney, for the fiscal year 1950-51. In doing so it has been my endeavor to avoid details in respect to the manifold activities of this office and to give you, so far as possible, a general summary of the services rendered. The work of the office is divided generally into that which is of a strictly municipal character and that relating to legal affairs arising out of the activities of the City in its proprietary capacity. In the latter group, the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department in the field of litigation during the last fiscal year:

Actions filed	318
Actions tried, settled or dismissed	256
Actions pending at end of fiscal year	791
Compromises approved by court of claims of minors	15
Claims filed	910

In addition to the foregoing, 628 non-litigated cases, in excess of \$100, were settled by the Public Utilities Department after the rendition of services in regard thereto by this office. In respect to each of these claims, a review was made in this office and advice given as to settlement. Written approval of the settlement was given to the Public Utilities Commission and to the Controller, releases and other closing documents were also approved in each instance. These claims related to the following departments:

Hon. Elmer E. Robinson
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Municipal Railway	608
Water Department	20
Total	<u>628</u>

The increase in the number of such claims settled during the last fiscal year over the preceding fiscal year was due, in large part, to a continually added emphasis on a policy of settlement before claimants filed suit. I feel that this has resulted in a considerable saving in view of the fact that by the time suits are filed the claims have nearly always assumed much larger proportions.

Representation was also given to numerous street car and bus operators at coroner's hearings and hearings in the Criminal Division of the Municipal Court where facts involved in the proceedings were related to substantial damage actions against the city and county.

Railway damage actions filed against the city and county pending during the last fiscal year total in the amounts prayed for, the sum of \$16,500,000.

With reference to departments other than the Municipal Railway, 188 actions were filed in the last fiscal year. Many of these actions related to eminent domain, a number to the work of the Police Department, the Public Works Department, Retirement Board and Civil Service Commission; others related to the airport, the Water Department, the Fire Department, the Health Department, the Sheriff's Office, the Recreation and Park Department, the Juvenile Court, the San Francisco Unified School District, Tax Collector, and a few to other city offices and departments. There were numbers of proceedings also, in which it was necessary to represent the city or its officers, in which there was sought declaratory relief, writs of mandamus, prohibition, injunctions or orders to show cause. As always, numerous McEnerny actions were filed and determined.

Actions tried, settled or dismissed, exclusive of McEnerny actions, eminent domain actions or special proceedings	89
Actions pending at end of fiscal year	457
Claims filed against all departments other than Municipal Railway:	530

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Numerous claims remain against the State for reimbursement of Public Welfare Aid. A number of legal actions were prosecuted for this purpose also.

Under Section 172 of the Charter of the City and County of San Francisco, the retirement system administers the benefit provisions of the Workmen's Compensation laws of the State of California. Whenever a hearing is required by the Industrial Accident Commission of the State of California, the City Attorney's office represents the City and the employees retirement system in that hearing. The hearings usually fall into two categories:

- (1) the City denies liability for alleged injuries of an employee or
- (2) the City contests the amount of disability alleged.

Throughout the year hearings occur about twice a week. The City Attorney also prepares the necessary legal papers and documents objecting to adverse decisions.

Under the laws of the State of California the City has a right of subrogation against any third party who causes an injury to a City employee in the course and scope of his employment. This right is for the amount which the City has expended for the employee because of his injuries.

A recent survey has disclosed that for the year 1950-51, there were 159 claims for industrial injuries involving a question of third party liability. The City Attorney assists in the collection of these claims either by suit or settlement.

In addition to these two tasks the City Attorney reviews all proposed settlements between the retirement board and third parties and prepares the necessary documents in proper cases for the approval of these settlements by the Board of Supervisors.

WATER SUPPLY EXTENSION, 13 SUITS, 1019 DEFENDANTS

The Hetch Hetchy Water Supply Department and the San Francisco Water Department during the past year have been actively engaged in assuring the people of San Francisco of an adequate water supply for the future by condemning approximately 43 miles of private property in order to construct additional water lines into the City's reservoirs. This has necessitated the filing by this office of 13 separate

suits involving the rights and interests of some 1019 individual defendants in the property condemned. The main eminent domain proceedings involve some 38 miles of property of the Bay Division pipe line No. 3, which starts at the Coast Range near Mission San Jose, then swings around the southern portion of San Francisco Bay, passes in general through property located in Sunnyvale, Mountain View, Stanford University, Menlo Country Club, and Woodside into the San Francisco Water Department's lakes.

This project alone condemned an 80 foot right of way approximately 38 miles long, and necessitated filing 8 separate actions in the counties of Alameda, Santa Clara and San Mateo. It involved the rights and interests of some 943 defendants. At the present time of this total number of defendants, there remains approximately rights and interests, and damage claims as a result of construction, of some 50 defendants, all the other interests having been tried or settled during the past year.

The other named project is the Baden Pipe Line from the reservoir of San Francisco lakes to the Sunset Reservoir, which actions are still pending awaiting further negotiation or trial date.

PURCHASE AND USE TAX VALIDATED, \$400,000 ADDITIONAL
ANNUAL LIQUOR SALES TAX GAINED FOR THE CITY.

In the year 1950 the decision of the California Supreme Court in the case of Ainsworth v. Bryant became final, the time for appeal to the Supreme Court of the United States having expired.

In the Ainsworth case the constitutionality of our purchase and use tax was attacked generally on the grounds of its being a property tax and constituting double taxation and specifically as being violative of Section 22 of Article XX resting on exclusive power of taxation of the Liquor industry in the state. The decision sustained the validity of the tax generally and in its application to liquor sales.

In addition to its tremendous importance to the city and county in sustaining the general validity of the tax it has been estimated that the decision results in some \$400,000 additional annual revenue under the ordinance. This revenue was not widely anticipated at the time of passage of the ordinance as it was the general opinion of city attorneys throughout the state at that time that the liquor industry was immune from this type of tax. In fact, it seemed to be the universal view that we would be unsuccessful in the litigation insofar

as the liquor phase of it was concerned. A considerable number of amici curiae filed or joined in briefs opposing the tax. The case went against the city in the District Court of Appeal, but we petitioned the Supreme Court for a hearing. This hearing was granted and resulted in complete success and the validation of City income of close to half a million dollars every year.

This case is now considered as the most significant decision upholding the local power of taxation since the decision in the West Coast Advertising Company case.

PARKING AUTHORITY

The St. Mary's Garage project, the Mission parking project, governmental restrictions on construction and other projects and problems of the new Parking Authority have required much legal assistance from this office.

REDEVELOPMENT AGENCY

The same comment may be made as to the Redevelopment Agency in respect particularly to its Diamond Heights and Western Addition projects, in regard to federal contracts and to new state legislation to improve the methods of carrying on urban redevelopment work for the public benefit without invading the proper field of private enterprise.

ACTIVITIES OF THE RATE DEPARTMENT OF THE CITY ATTORNEY'S OFFICE FOR THE FISCAL YEAR 1950-51.

During the fiscal year 1950-51 this Department participated in hearings before the Public Utilities Commission of the State of California, as well as making reports to the Board of Supervisors on taxicab rates and assisting the El Paso Natural Gas Company to obtain an additional 150,000,000 cubic feet of natural gas per day to serve Northern California.

The principal hearings during the year before the Public Utilities Commission were on applications of the Pacific Telephone & Telegraph Company, and Pacific Gas and Electric Company for increases in rates.

TELEPHONE

In April of 1950 the Pacific Telephone & Telegraph Company applied for an increase in rates estimated to be \$30,000,000 annually. On September 27, 1950, this application was amended and the increase estimated at \$30,000,000 annually.

After three days of hearing in September, 1950, and upon motion of the Cities of San Francisco, Oakland and Los Angeles, the Commission dismissed this application on October 19, 1950. In August, 1951, the Pacific Telephone and Telegraph Company filed an application with the Public Utilities Commission of the State of California asking authority to increase rates for telephone service on a state-wide basis by an amount estimated at \$14,500,000 annually. Hearings were held on this application on September 6th and 7th, 1951, and the case submitted on September 7, 1951. This rate increase asked by the company was solely to compensate the company for the fifth round wage increase granted to its employees.

GAS

On June 7, 1950, the Pacific Gas & Electric Company made application to the State Public Utilities Commission for an increase in gas rates estimated to amount to \$15,553,800 annually. On September 27, 1950, the company filed an amended application. This would increase the prior request for \$15,553,800 to an estimated \$18,158,000 annually. This additional increase was alleged to be required due to an increase in Federal taxes. Thirteen days of hearings were held during October, November and December, 1950. At the close of the company's presentation on October 20, 1950, counsel for the City of San Francisco made a motion to dismiss. This was taken under submission and on November 20, 1950, was denied. Further hearings were held and on November 22, 1950 the Pacific Gas and Electric Company made a motion asking for an interim rate relief starting January 1, 1951. On January 23, 1951, the Commission granted the company an interim rate increase by increasing the general customers' bills by $11\frac{1}{2}$ per cent, which gave the company an increase of about \$7,000,000 a year, a fraction of the amount applied for. This interim order was effective February 18, 1951. Further hearings were held during May and June, 1951. Oral argument was held on June 19, 1951, on which date the case was submitted. A decision by the Commission is due at any time in the near future.

ELECTRIC

On July 18, 1951, the Pacific Gas & Electric Company filed application No. 32589 for an increase in electric rates estimated on an annual basis to amount to \$37,653,000, or an increase of $18\frac{1}{2}$ per cent. No date has been set for hearings on this application. In the meantime the Department is studying the application.

TAXICAB RATES

During the past year 1950-1951, this Department made two reports on taxicab rates to the Board of Supervisors. The first report showed the earnings of the Yellow Cab Company and the De Soto Cab Company under rates existing on December 31, 1950. The second report was at the request of the Yellow Cab Company and the De Soto Cab Company for increase in the "flag" or "drop" of 20 cents.

EL PASO NATURAL GAS

On May 25, 1951, an affidavit was made by the Chief Valuation and Rate Engineer of the Rate Department of this office in support of the El Paso Natural Gas Company, plaintiff, against Oscar L. Chapman, Secretary of the Interior, defendant, for a preliminary injunction. This affidavit was made in behalf of the El Paso Natural Gas Company that the company could complete its pipe line over Government lands and bring an additional 150 million cubic feet per day of natural gas to San Francisco and the Bay Area. It was necessary that the El Paso Natural Gas Company complete its pipe line over Government lands so that it could deliver to the Pacific Gas and Electric Company this additional 150,000,000 cubic feet of gas per day in order to meet the peak day in the fall of 1951.

The City Attorney determined that this unusual action was necessary to meet needs created by the large growth in population in Northern California.

Judge Bastian in the United States District Court for the District of Columbia supported this position and granted the injunction on June 28, 1951.

GENERAL

In addition to the above matters the Rate Department participated in hearings before the Public Utilities Commission on the issuance of bonds and common and preferred stock of the larger utilities, as well as in the investigation of the availability of electrical energy and natural gas to supply the users of these services in view of the expanded defense economy in San Francisco.

CITY AND COUNTY OF SAN FRANCISCO V. SUPERIOR COURT.

This is a Petition for Writ of Prohibition respecting important litigation regarding wage standardization nowpending before the Supreme Court of the State of California.

This proceeding arises out of the Superior Court action of Davenport v. City and County of San Francisco, et al, wherein some 500 employees sought to have it established that the wage standardization ordinance as adopted by the Board of Supervisors for the fiscal year 1949-50 was not in accord with the rates of wages required for the positions involved by section 151 of the charter. As a part of this proceeding a motion was made by the City employees for an order permitting them to inspect all the data and figures dealing with wages upon which the recommendations of the Civil Service Commission were based for the fiscal year in question. The Civil Service Commission agreed to supply all of the data requested save for the source of the specific data furnished by specific employers. This they refused to furnish because they had received the source of this data under a pledge that they had given that it would be held and kept in official confidence, which was the only basis upon which the private employers would supply the data to the Civil Service Commission. The Commission felt that it had no authority to breach its pledge of official confidence. Nevertheless the Superior Court issued an order of inspection as requested by the City employees.

This presented a very crucial problem to the City. If the pledge was breached the private employers would no longer cooperate with the City in making its wage survey. As a result, the City decided that the issue was of such vital importance that it required a determination by our Appellate Courts, and a petition was therefore prepared seeking a peremptory writ to prohibit the enforcement of the order of the Superior Court permitting the inspection of all documents in the possession of the Civil Service Commission. This issue was of vital importance to others in San Francisco and upon the City's filing the petition with the District Court of Appeal, the following groups appeared amicus curiae on behalf of the City, to wit: U.S. Attorney and U.S. Solicitor on behalf of the Department of Labor of the United States; Attorney General of the State of California on behalf of the State Personnel Board; and three of the outstanding private law firms of San Francisco on behalf of a number of private employers who cooperated in the survey under the pledge as given by the Civil Service Commission.

Hon. Elmer E. Robinson
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This matter was argued twice before the District Court of Appeal and thereafter, in May 1951, the District Court rendered its opinion denying the Writ of Prohibition, which appears in 104 A.C.A. 451.

A petition for a hearing before the Supreme Court of the State of California was filed by the City challenging this opinion of the District Court of Appeal. The Supreme Court granted the petition for a hearing before it. The matter was argued before the Supreme Court this month and is now pending before it for decision.

BURGER V. EMPLOYEE'S RETIREMENT SYSTEM, 101 Cal. App (2) 700.

This case is one of the most important of recent years relating to the operations of the Retirement System. The case was tried in the Superior Court and won by the Retirement System. The judgment was sustained by the District Court of Appeal, and an application for a hearing by the Supreme Court was successfully resisted.

The action was one for declaratory relief and while only one plaintiff was involved and the amount in question was small, this was a test case. There were a large number of other City employees similarly situated, and were the case to have been decided adversely, many thousands of dollars would have been involved. As a matter of fact, the Retirement System, pending the litigation, had earmarked a substantial sum of money to be used for settlement in case the litigation was decided adversely.

This was an action by a City employee who was retired for service from the Fire Department in 1944 and was at the time under sixty-two years of age. While on retirement he engaged in a gainful employment at the United States Naval Station on Treasure Island, and for the month in question (July, 1947) received a salary from them in the sum of \$375. During the period of his employment with the City he was not required to make any contribution to the Retirement System. In the litigation he claimed the right to receive his full retirement allowance from the City in addition to the \$375 per month salary he was then receiving from the Naval Station at Treasure Island. The Retirement System claimed that under the provisions

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Page Ten.

of our charter (Section 163) under the facts of this case, certain deductions were required to be made from the retirement allowances paid by the City as a result of Burger's employment in gainful occupation at \$375 per month. It is interesting to note that when he worked for the City the salary attached to the rank of lieutenant in the fire department, which rank he held for more than three years prior to his retirement, was then \$345 per month.

Under an amendment to Section 163 of the charter in 1945, it was provided that the deduction provision of 163 would be inoperative "during the existing war between the United States and the Axis powers and for six (6) months after the termination of said war." The legal issue involved was whether the proclamation of the President on December 31, 1946, effected a termination of said war insofar as this charter provision was concerned.

It was the City's position that this was the case, and that while a technical state of war might have still existed, in the popular sense the war terminated. The Appellate Court sustained our views and held that the war had terminated in the popular sense insofar as the provisions of section 163 of the charter were concerned, and that therefore it was proper that the deductions be made from the retirement allowance paid to Mr. Burger as a result of his having engaged in gainful employment after his retirement and receiving therefor \$375 per month. This decision saved the Retirement System and the City of San Francisco many, many thousands of dollars.

CONTRACT PREPARATION AND APPROVAL.

Innumerable contracts have been prepared by the office of the City Attorney that cover all activities of the City in its proprietary capacity. Some of these are for Public Works; others are for the engagement of experts; others are for the furnishing of supplies and equipment, under competitive bid, and still others relate to transactions between the City and County and the United States or the State of California.

LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS.

As the legal officer in the vast civil business of the city government, the City Attorney has been required to advise its various department heads and agencies on legal questions concerning not only the welfare of its citizens, but many millions of dollars in property values. Some of this advice has been informal, whether written or oral. The complication of many questions, however, has required extensive legal research and the issuance of formal legal opinions. Such opinions have frequently been upon subjects quite new and different, upon which prior opinions of the courts throw little light. Such formal opinions have numbered 175 during the last year. They are comparable to several volumes of the work of the appellate courts.

The broad scope of these opinions may be indicated by half a dozen or more titles chosen somewhat at random from those issued during the last year, as follows:

Powers of Board of Supervisors (a) in various Public Welfare matters, (b) in Zoning Appeals, (c) in approval of public utility rates and in other matters.

Effect of certain National Production Orders on certain Recreation and Park Department contracts.

Validity of agreements between San Francisco Housing Authority and San Francisco respecting certain housing projects.

Taxation of property as to which transit in interstate commerce has been interrupted.

Federal Social Security requirements relating to Municipal Railway employees.

Hon. Elmer E. Robinson
Page Twelve.

Disaster Corps Activities, Liability of Contracts to Civil Action, Uniforms for Police Reserve and numerous other phases of this new field of law.

Exemptions relating to war veterans, action in Korea.

Loyalty oath requirements in relation to employees in various agencies of government.

Process necessary to establish exemption from Purchase and Use Tax Ordinance, particularly relating to property employed in the transportation of gas and electricity in interstate or foreign commerce.

LOYALTY OATH LITIGATION.

So-called loyalty oath litigation has been a serious responsibility of the office during the past year. It has consumed much time and has required the City Attorney to represent the City and County and the Board of Education in all the local courts from the Superior Court to the Supreme Court. Although the litigation is not finally determined, our office has been uniformly successful to date. I am gratified to report that in San Francisco the total number of employees of the City and County and its various agencies who refused to take the oath was actually exceedingly small.

In conclusion I must make the comment that it is impossible in a summary of this sort to report fully upon the many ramifications of the daily work of this office. I have sought in this report to mention totals where possible, and highlights where of special interest, but must rely upon your own personal knowledge of much of the work of this office to indicate to you its widespread nature and tremendous total content of accomplishment.

Several times in the past I have made a request for additional deputies. I trust that the content of this report will reinforce my previous request. You will note that the work of this office has expanded greatly in recent years, and that the Parking Authority and Redevelopment Agency are now taking much time of this office in their legal requirements. I must recommend that four additional employments of Deputy City Attorney be created for the office. If this is done, you may rest assured that it will result in savings to the City of far greater sums than the

Hon. Elmer E. Robinson
Page Thirteen.

amounts of salaries required for the purpose.

If there are any specific figures and facts omitted from this report, which you desire, please advise me, and they will be furnished to you.

Respectfully submitted,

A handwritten signature in cursive script, reading "Dion R. Holm". The signature is written in dark ink and is positioned above the typed name.

DION R. HOLM, City Attorney.

CITY ATTORNEYS

A. DAL. THOMSON
PUBLIC UTILITIES COUNSEL
WALKER PEDDICORD
CHIEF DEPUTY CITY ATTORNEY
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DION R. HOLM**CITY ATTORNEY**

CITY HALL

SAN FRANCISCO 2, CALIFORNIA

HEMLOCK 1-1322

September 22, 1952

DEPUTY CITY ATTORNEYS

THOMAS J. BLANCHARD
THOMAS M. O'CONNOR
WILLIAM F. BOURNE
EDWARD F. DULLEA
JOHN ELMER BARRICKLO
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JEROME COHEN
ROBERT NICCO
AGNES O'BRIEN SMITH

PAUL L. BECK
CHIEF VALUATION AND
RATE ENGINEER

Honorable Elmer E. Robinson
Mayor of San Francisco
City Hall
San Francisco 2, California

Dear Mayor Robinson:

I respectfully submit the following as my report to you of the activities of the office of City Attorney for the fiscal year 1951-1952. In doing so it has been my endeavor to avoid details in respect to the manifold activities of this office and to give you, so far as possible, a general summary of the services rendered. The work of the office is divided generally into that which is of a strictly municipal character and that relating to legal affairs arising out of the activities of the city in its proprietary capacity. In the latter group, the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department in the field of litigation during the last fiscal year:

Actions filed	370
Actions tried, settled or dismissed	362
Actions pending at end of fiscal year	821
Compromises approved by court of claims of minors	12
Claims filed in City Attorney's office	1020

In addition to the foregoing, 542 non-litigated cases, in excess of \$100.00, were settled by the Public Utilities Commission after the rendition of services in regard thereto by this office. In respect to each of these claims, a review was made in this office and advice given as to settlement. Written approval of the settlement was given to the Public Utilities Commission and to the Controller; releases and other closing documents were also approved in each instance.

Representation was also given to numerous street car and bus operators at coroner's hearings and hearings in the Criminal Division of the Municipal Court where facts involved in the proceedings were related to substantial damage actions against the city and county.

Railway damage actions now pending against the city and county total, in the amounts prayed for, the sum of \$17,000.000.

With reference to departments, other than the Municipal Railway, 251 actions were filed in the last fiscal year. Many of these actions related to eminent domain, a number to the work of the Police Department, Department of Public Works, Retirement Board and Civil Service Commission; others related to the airport, the Water Department, the Fire Department, the Health Department, the Sheriff's office, the Recreation and Park Department, the Juvenile Court, the San Francisco Unified School District, Tax Collector, and a few to other city offices and departments. There were numerous proceedings also, in which it was necessary to represent the city or its officers, in which there was sought declaratory relief, writs of mandamus, prohibition, injunctions or orders to show cause. As always, numerous McEnerny actions were filed and determined.

Actions tried, settled or dismissed, exclusive of McEnerny actions, eminent domain actions or special proceedings	101
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Actions pending at end of fiscal year	481
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Claims filed against all departments other than Municipal Railway	505
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During the last fiscal year, it is noteworthy that a total of 181 jury cases, involving all departments of the city and county, were tried by this office in the San Francisco Superior Court. In some cases a single one of these trials would require from a week to ten days. On many occasions as high as six jury cases, in which the city was involved, were assigned by the court to commence on a Monday morning. A very large percentage of the Superior Court jury trial work of the city and county is done by this office. More than one downtown office, which tries only a small fraction of the number of cases that this office does, has a larger personnel. This figure does not, of course, include either Municipal Court cases whether tried before a jury or before a judge only or Superior Court cases tried before a judge without a jury.

WATER DEPARTMENT

Extensive litigation involving numerous cases in the condemnation of realty for Pipe Line No. 3, which is a new pipe line from Hetch Hetchy going around the upper part of the San Francisco Bay, has been brought to substantial completion.

AIRPORT

The city has unfortunately been in controversy with a number of air lines on payment of past charges for landing fees at the Airport. This controversy revolves around the question as to the proper interpretation of landing and take off charges governed by a formula on what has been called "disposable load." The various air lines interposed numerous contentions regarding what was or was not an item of normal equipment upon a plane. The city has succeeded in gaining full payment according to its own interpretation from these various air lines.

It was necessary to bring suit against American Airlines, Inc. and Western Airlines, Inc. American Airlines has paid the sum of \$1087.04, the full amount for which we sued. The action against Western Airlines in the sum of \$28,173.99 upon the same issue will apparently have to be tried.

Another accomplishment of Airport legal affairs was in the payment by Pan American of a sum of over \$4,000 for common use facilities, although that company previously maintained that, by reason of the terms of its lease, it was not obligated to pay for these common use facilities.

An important development in utility legal affairs was in the rendition by the City Attorney of an official opinion to the effect that all consumers of Water Department are legally obligated to pay for the consumption of water upon the basis of the general schedule of rates and charges of the Water Department, notwithstanding the terms of various contracts previously entered into by the Spring Valley Water Company affording special rates in exchange for rights of way or transfers of water rights. Some of these consumers have accepted the City Attorney's opinion; others have not done so. It will doubtless be necessary to sue the latter and such suits are now being prepared.

ACTIVITIES OF THE RATE DEPARTMENT OF THE CITY
ATTORNEY'S OFFICE FOR THE FISCAL YEAR 1951-1952

During the fiscal year 1951-1952 this department participated in hearings before the Public Utilities Commission of the State of California as well as making reports to the Board of Supervisors on taxicab rates, and in conjunction with the Public Utilities Commission of San Francisco and the Controller's Office made an estimate of the revenues that would be obtained under a 15¢ fare for the fiscal year 1952-1953.

The principal hearings during the year before the Public Utilities Commission were applications of the Pacific Telephone and Telegraph Company for increased telephone rates and of the Pacific Gas and Electric Company for increased gas and electric rates.

TELEPHONE

In August, 1951, the Pacific Telephone and Telegraph Company filed an application with the Public Utilities Commission of the State of California asking authority to increase rates for telephone service on a statewide basis by an amount estimated at \$14,500,000 annually. Hearings were held on this application on September 6th and 7th, 1951, and the case submitted on September 7, 1951. This rate increase asked by the company was solely to compensate the company for the fifth round wage increase granted to its employees and which it estimated would require an increase in rates of \$14,500,000 annually to equalize and keep the company's earning position at the same level that it was before the wage increase. On October 8, 1951, the application of the company was granted. This decision allowed the company a 5.6% rate of return after making an allowance for federal income tax of 52%.

GAS

As stated in my report for the fiscal year 1950-1951, the gas rate case which was tried during that year was submitted on June 19, 1951. Subsequent thereto on October 2, 1951, the Commission handed down its decision in the above mentioned case. The Commission decision, although granting the company an increase in natural gas rates of \$9,000,000 annually, was nevertheless \$2,000,000 less than sought by the company. The principal reason for the granting of the increase in rates was due to increased wages and increased cost of

materials and supplies used in the company's operations and an increase in federal income taxes on corporations.

An additional increase of \$1,387,750 was granted by the Commission on December 4, 1951. This increase was due to the fact that the Federal Power Commission had authorized the El Paso Natural Gas Company to increase the charges for its gas served to the Pacific Gas and Electric Company one cent a thousand cubic feet and the order of the State Public Utilities Commission consequently allows the Pacific Gas and Electric Company reimbursement for this expense of out-of-state gas. In this hearing counsel for the California Manufacturer's Association took the position that large interruptable industrial customers should not have their rates increased. The City of San Francisco took the view that all classes of customers should bear some part of the added cost. The California Public Utilities Commission accepted San Francisco's views on this point.

The use of natural gas in northern California has increased to such an extent that it has been necessary for the Pacific Gas and Electric Company to import natural gas from Texas and New Mexico. As additional natural gas from sources in California would not be available to meet the annual and peak day firm requirements on the Pacific Gas and Electric Company's system, the Pacific Gas and Electric Company made application to the Federal Power Commission and the State Public Utilities Commission of California to construct facilities so as to deliver to northern California by the end of the calendar year 1952 550,000,000 cubic feet a day of out-of-state gas. The application of the company was granted by both the Federal Power Commission and the State Public Utilities Commission. The Pacific Gas and Electric Company has already entered into negotiations with the El Paso Natural Gas Company to obtain an additional supply of gas by November 1, 1953, to bring the amount of out-of-state gas being delivered to northern California to 600,000,000 cubic feet a day, and on November 1, 1954, to increase this to 700,000,000 cubic feet a day. With the delivery of 550,000,000 cubic feet of gas a day by the El Paso Natural Gas Company it will mean that approximately one-half of the natural gas used on the Pacific Gas and Electric Company will be out-of-state gas.

ELECTRIC

On July 8, 1951, the Pacific Gas and Electric Company filed an increase in electric rates estimated on an annual basis to amount to \$37,650,000, or an increase of 18 $\frac{1}{2}$ %. This increase was to reimburse the

company for increased operation expenses and income taxes. Hearings began on this application on November 7, 1951, and the case was submitted July 25, 1952. Over this period of time 36 days of hearings were held. The City Attorney participated in all these hearings and argued successfully against a motion for an interim increase in electric rates on February 6, 1952. The principal points at issue in this rate proceeding were rate of return, depreciation expense, and spread of rates.

KEY SYSTEM TRANSIT LINES

Hearings were held on the application of the Key System Transit Lines to increase the local fares as well as the trans-bay fares. Hearings were held on May 26, June 2 and June 4, 1952. The company requested a single zone fare on its local transit line of 15¢ and an increase in trans-bay fares of 5¢. On July 8, 1952, the Commission granted the application of the Key System.

TAXICAB AND AMBULANCE RATES

During the past fiscal year this department, in conjunction with the Controller's office, made a report on taxicab rates to the Board of Supervisors with the recommendation that "traffic delay time" be eliminated.

A study of ambulance rates is under way at the present time.

In addition to the above matters, the Rate Department participated in hearings before the Public Utilities Commission on the issuance of bonds, and common and preferred stock of the larger utilities, as well as in the hearings on the investigation of the availability of electrical energy and natural gas supply to meet customers' needs. The Rate Department has also participated in hearings of the Pacific Gas and Electric Company for authority to construct a steam-electric generating plant with a capacity of 600,000 kilowatts at Pittsburg.

I regard the matters relating to public utility service in San Francisco as of utmost importance. I am doing all possible in that regard with only one rate engineer and no staff other than the general office force. I am doing this because I believe an adequate, reasonably priced public utility service is absolutely necessary to both the welfare and growth of San Francisco. I have no more important duty as City Attorney, and an increased staff in this field of work would pay both business and home owners, employers and employees of San Francisco well.

Several cases have been completed during the last year in various fields of municipal government other than those mentioned which are worthy of special note.

CITY AND COUNTY OF SAN FRANCISCO v. SUPERIOR COURT
38 Cal. (2d) 516

A most important case in the field of public employee wage litigation was successfully concluded during the last year.

In CITY AND COUNTY OF SAN FRANCISCO v. SUPERIOR COURT, 38 Cal. (2d) 516, the city sought a writ prohibiting the enforcement of an order of the Superior Court allowing the inspection of certain documents and data in the possession of the Civil Service Commission of the City and County of San Francisco. The issue involved was of such grave importance as to necessitate taking the issue not only to the District Court of Appeal, but to the Supreme Court of our state as well.

The questioned Superior Court order of inspection was issued in the Superior Court action of DAVENPORT v. CITY AND COUNTY OF SAN FRANCISCO, et al., wherein some five hundred employees sought to have it established that the wage standardization ordinance as adopted by the Board of Supervisors for the fiscal year 1949-1950 was not in accord with the rates of wages required for the positions involved by Section 151 of the Charter. As a part of this proceeding a motion was made by the counsel for the city employees for an order permitting them to inspect all the data and figures dealing with wages upon which the recommendations of the Civil Service Commission was based for the fiscal year in question. The Civil Service Commission agreed to supply all of the data requested save for the source of the specific data furnished by specific employees. This they refused to furnish because they had received the data from sources under a pledge that they had given that the source of the specific data would be held and kept in official confidence which was the only basis upon which the private employees would supply the data to the Civil Service Commission. The Commission felt that it had no authority to breach its pledge of official confidence. Nevertheless the Superior Court issued an order of inspection as requested by the city employees.

This presented a very crucial problem to the city. If the pledge were breached the private employers would no longer cooperate with the city in making its wage survey. As a result, the city decided that the issue was of such vital importance that it required a determination by our appellate courts, and a petition was therefore prepared seeking a peremptory writ to prohibit the enforcement of the order

of the Superior Court permitting the inspection of all documents in the possession of the Civil Service Commission.

This matter was argued twice before the District Court of Appeal, which court thereafter rendered its opinion sustaining the Superior Court order and denying the Writ of Prohibition.

The Supreme Court subsequently heard the appeal and after argument rendered its opinion, sustaining the city's position, and granting the peremptory writ, as requested, to prohibit the enforcement of the order of inspection as given by the Superior Court. This is a "leading" case in its field.

"SIDEWALK" CASES

The City Attorney has successfully fought during the past year against the tendency of juries to charge the municipal government with the cost of accidents, not only with respect to the Municipal Railway and other utilities, but in regard to the operation of governmental functions themselves. The increasing number of so-called "sidewalk" cases have been won. Others have been settled, after considerable litigation, on a reasonable basis.

RECREATION AND PARK DEPARTMENT CASES

On March 21, 1952, the District Court of Appeal (First Appellate District, Division Two, 109 Cal. App. (2d) 844) decided that in the maintenance of the zoo, the city operates in a governmental capacity and no evidence of a dangerous or defective condition existed within the meaning of the Public Liability Act. The court upheld the judgment directing verdict in favor of the city in McKinney v. City and County. In this case a spectator at the zoo had managed to get himself into a position where unfortunately a polar bear was able to reach and injure him. He attempted unsuccessfully to lay the blame for his misfortune on the city.

The operation of Golden Gate Park was concerned in the case of Betts v. City and County, 108 ACA 806. A child of the plaintiff had been drowned in the Strawberry Hill Reservoir and on suit for damages by the parents a jury granted a verdict of \$8500.00. This office was able to gain a reversal on appeal and to establish that in such a case the city has no liability under the Public Liability Act of 1923 (now Government Code Section 5305.1) for injury or death suffered upon public property when the party so injured or killed was a trespasser on that property. I predict that these cases will become leading ones to stop a trend which could make wellnigh impossible the operation of recreation facilities for the public benefit.

PARKING AUTHORITY AND REDEVELOPMENT AGENCY PROJECTS

A great amount of legal work has been done, meetings attended and advice given to help in the work of these agencies newly associated with the city government.

The lease of St. Mary's Square subsurface and adjoining area has been awarded and construction of an off-street public garage should commence shortly. In the interim some of the area is now being used for a parking lot, thus bringing income to the city.

Upon the completion of clearing and paving the half city block, Mission-Bartlett Public Parking Plaza will be let to an operator.

In respect to St. Mary's Square, the city receives a garage worth about \$2,250,000 immediately upon completion with rent not less than \$1225.00 per month for 33 years (\$485,100) and then has a going business to offer on bid estimated to be about \$150,000 per year thereafter.

Diamond Heights Redevelopment Plan is now going into its final phase. Engineering of streets and property lines is commencing. Final plan to be ready about July, 1953, when acquisition may begin. Will make about 2300 new dwellings available.

Western Addition Redevelopment Project Area No. 1 is going into public hearing on Tentative Plan phase. Will proceed concurrently with Diamond Heights Plan. They are necessary adjuncts to each other.

OLD AGE ASSISTANCE - RESPONSIBLE RELATIVE CONTRIBUTIONS

The Public Welfare Department refers to the City Attorney's office for prosecution all cases where responsible relatives are financially able to aid the indigent parent applying for old age assistance and who refuse to agree with the Public Welfare Department to pay under the scale set out in Welfare and Institutions Code or who neglect to respond to inquiries concerning their ability to pay. Approximately twenty such situations are handled per month. When there is a persistent refusal suit is then filed by the City Attorney's office and brought to trial. In June, 1952, seven such cases were filed. The office of the City Attorney devotes much attention to these matters to the end that the interest of both the taxpaying public and the private citizen shall be protected with understanding, fairness and justice.

WORKMEN'S COMPENSATION LITIGATION

Under Section 172 of the Charter of the City and County of San Francisco, the retirement system administers the benefit provisions of the Workmen's Compensation laws of the State of California. Whenever a hearing is required by the Industrial Accident Commission of the State of California, the City Attorney's office represents the city and the employees' retirement system in that hearing. The hearings usually fall into two categories:

- (1) The city denies liability for alleged injuries of an employee, or
- (2) the city contests the amount of disability alleged.

Throughout the year hearings occur about twice a week. The City Attorney also prepares the necessary legal papers and documents objecting to adverse decisions.

Under the laws of the State of California the city has a right of subrogation against any third party who causes an injury to a city employee in the course and scope of his employment. This right is for the amount which the city has expended for the employee because of his injuries.

A recent survey has disclosed that for the year there were 167 claims for industrial injuries involving a question of third party liability. The City Attorney assists in the collection of these claims either by suit or settlement.

CONTRACT PREPARATION AND APPROVAL

Innumerable contracts have been prepared by the office of the City Attorney that cover all activities of the city in its proprietary capacity. Some of these are for public works; others are for the engagement of experts; others are for the furnishing of supplies and equipment, under competitive bid, and still others relate to transactions between the City and County and the United States or the State of California.

LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

As the legal officer in the vast civil business of the city government, the City Attorney has been required to advise its various departments and agencies on legal questions concerning, not only the welfare of its citizens, but many millions of dollars in property values. Some of this advice has been informal, whether written or oral. The complication of many questions, however, has required extensive legal research and the issuance of formal legal opinions. Such opinions have frequently been upon subjects quite new and different, upon which prior opinions of the courts throw little light. Such formal opinions have numbered 176 during the last year. They are comparable to several volumes of the work of the appellate courts.

LOYALTY OATH LITIGATION

So-called loyalty oath litigation has been a serious responsibility of the office during the past year. It has consumed much time and has required the City Attorney to represent the City and County and the Board of Education in all the local courts from the Superior Court to the Supreme Court. Although the litigation is not finally determined, our office has been uniformly successful to date. I am gratified to report that in San Francisco the total number of employees of the City and County and its various agencies who refused to take the oath was actually exceedingly small.

ADDITIONAL TRANSBAY CROSSING

San Francisco greatly needs additional outlets across the bay. A southern crossing has been made the official policy of the city. Before the close of the fiscal year, the City Attorney started work to carry out this policy and since that time has been successful in intervening in the Supreme Court in litigation now pending there to test the validity of the ~~San Francisco~~ Toll Bridge Authority's attempt to issue bonds for the building of additional approaches to the present San Francisco-Oakland Bay Bridge. If such bonds are issued, it will devote the receipts of this bridge for some years to come to the construction of these approaches and will greatly hamper efforts toward a crossing of the bay farther to the south. Every effort is being devoted by this office to success in this important case.

In conclusion I must make the comment that it is impossible in a summary of this sort to report fully upon the many ramifications of the daily work of this office. I have sought in this report to mention totals where possible, and highlights where of special interest, but must rely upon your own personal knowledge of much of the work of this office to indicate to you its widespread nature and tremendous total content of accomplishment.

I feel it my duty to make two urgent requests in this report. The first has to do with the inadequacy of the quarters in which the City Attorney's office is now located. The hallway of the City Hall proper has been blocked off on the entire southeast portion of the building and is now used for office and library facilities. It is used as an entrance and waiting room, for the location also of the law clerk, bookkeeper and for the operation of the telephone exchange. It is also used as a library. Because of the distracting character of these office operations, the use of the facilities as a library is made very difficult. There is no ventilation in the area. Artificial light is relied on entirely during the day. Because of the hope that more ample space may be provided at some time in the future, it does not seem worthwhile to spend public funds for the installation of costly air conditioning equipment. Many of the private offices of the attorneys have no windows and are unsuitable for the purpose for which they are used. At least five attorneys have no private office. The offices of half of the attorneys can be reached only by passing through the offices of other attorneys. This situation interferes greatly with the interviewing of witnesses and sometimes even with the taking of depositions. The main stenographic room is but a small one. Seven stenographers, nevertheless, do their work in these cramped quarters. Necessarily this important work is at times done under great difficulties. I therefore urgently request that consideration be given to more adequate quarters for the performance of the work of the City Attorney.

My second urgent request is brought about by the increase of work which the office is performing. In the very recent past, the City Attorney has become the legal officer of the Parking Authority, the Redevelopment Agency, Health Service and the Civil Defense Department of the city government. Each of these departments requires in its work more services than a great number of the city departments which have been in existence for many years.


Members of the American Bar Association, many of them attorneys for legal departments of other cities, express themselves as astounded at the limited staff of the City Attorney's office in San Francisco. It is not a saving in the long run to the taxpayers for an important city

Honorable Elmer E. Robinson

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department such as that of the City Attorney to be understaffed. For several years I have requested additional deputies. These requests have not been successful. I believe that the office should have five more lawyers as deputies in order to accomplish its work fully, and that a position of librarian-file clerk should also be created. I have submitted in the past statistics showing the more adequate staffing of offices of City Attorneys in comparable municipalities. I trust that the additional staff and facilities may be viewed in the light of accomplishment to save funds for the taxpayers and rate payers in San Francisco and that these requests may be given careful attention.

Respectfully submitted,



CITY ATTORNEY

CITY AND COUNTY OF SAN FRANCISCO

DION R. HOLM
CITY ATTORNEY
CITY HALL

September 11, 1953

HONORABLE ELMER E. ROBINSON
Mayor of San Francisco
City Hall
San Francisco 2, California

Dear Mayor Robinson:

I respectfully submit the following as my report to you of the activities of the office of City Attorney for the fiscal year 1952-1953. In doing so it has been my endeavor to avoid details in respect to the manifold activities of this office and to give you, so far as possible, a general summary of the services rendered. The work of the office is divided generally into that which is of a strictly municipal character and that relating to legal affairs arising out of the activities of the city in its proprietary capacity. In the latter group, the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department in the field of litigation during the last fiscal year:

Actions filed	330
Actions tried, settled or dismissed	393
Actions pending at end of fiscal year	699
Claims filed in City Attorney's office	1004

In addition to the foregoing, 757 non-litigated cases, in excess of \$100.00, were settled by the Public Utilities Commission after the rendition of services in regard thereto by this office. In respect to each of these claims, a review was made in this office and advice given as to settlement. Written approval of the settlement was given to the Public Utilities Commission and to the Controller; releases and other closing documents were also approved in each instance.

Representation was also given to numerous street car and bus operators at coroner's hearings and hearings in the Criminal Division of the Municipal Court where facts involved in the proceedings were related to substantial damage actions against the city and county.

Six hundred and ninety-nine (699) railway damage actions are now pending against the city and county. The total amount prayed for is the sum of \$16,305,672.

With reference to departments other than the Municipal Railway, 234 actions were filed in the last fiscal year. Many of these

actions related to eminent domain, a number to the work of the Police Department, Department of Public Works, Retirement Board and Civil Service Commission; others related to the airport, the Water Department, the Fire Department, the Health Department, the Sheriff's office, the Recreation and Park Department, the Juvenile Court, the San Francisco Unified School District, Tax Collector, and a few to other city offices and departments. There were numerous proceedings also, in which it was necessary to represent the city or its officers, in which there was sought declaratory relief, writs of mandamus, prohibition, injunctions or orders to show cause. As always, numerous McNerny actions were filed and determined.

Actions tried, settled or dismissed, exclusive of McNerny actions, eminent domain actions or special proceedings	138
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Actions pending at end of fiscal year	503
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Claims filed against all departments other than Municipal Railway	630
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During the last fiscal year, it is noteworthy that a total of 124 jury cases, involving all departments of the city and county, were tried by this office in the San Francisco Superior Court. In some cases a single one of these trials would require from a week to ten days. On many occasions as high as six jury cases, in which the city was involved, were assigned by the court to commence on a Monday morning. A very large percentage of the Superior Court jury trial work of the city and county is done by this office. More than one downtown office, which tries only a small fraction of the number of cases that this office does, has a larger personnel. This figure does not, of course, include either Municipal Court cases whether tried before a jury or before a judge only, or Superior Court cases tried before a judge without a jury.

WATER DEPARTMENT

The City has filed fourteen suits against various consumers of the Water Department. These consumers had entered into contracts with the Spring Valley Water Company which afforded them special rates, in exchange for rights of way or transfer of water rights. The City seeks to attack the validity of these special contract rates and have those consumers pay for the consumption of water upon the basis of the general schedule of rates and charges of the Water Department. One of these suits is now in litigation as a test case.

AIRPORT

A very important suit involving the Trans World Airlines lease is at present on trial in the Federal Court. This case has far-reaching effects upon all airport leases with the various airlines and is being watched closely throughout the nation. This is a suit in declaratory relief instituted by Trans World Airlines against the City; in the suit, the City seeks to enforce rates established by the Public Utilities Commission notwithstanding the terms of the lease.

Another accomplishment has been the careful drafting of numerous leases for the Airport and Airport concession agreements in connection with the expansion at the Airport and the new facilities which are under construction. These leases and agreements involve millions of dollars.

WATER PROJECT

Various condemnation suits have been filed to condemn land for the Sunset Supply Line, which is an additional pipe line to bring water to San Francisco. This new pipe line runs through several counties of the State.

MUNICIPAL RAILWAY

The important case of Gowenlock v. City and County of San Francisco, involving the claim on behalf of the Municipal Railway platform men and bus operators, based upon the theory that each of the employees of this type is entitled to a guarantee of an eight-hour day and concomitant pay therefor, has now reached the Supreme Court of California after decision for the City on one phase and against the City on another phase in the District Court of Appeal.

RATE DEPARTMENT

During the fiscal year 1952/1953 this department participated in formal and informal hearings before the Public Utilities Commission of the State of California as well as making reports to the Board of Supervisors on taxicab and ambulance rates.

The principal formal hearings during the year were held before the Public Utilities Commission on the applications of the Pacific Telephone and Telegraph Company for increased telephone rates and the Pacific Gas and Electric Company for an increase in electric rates.

TELEPHONE

On December 10, 1952 the Pacific Telephone and Telegraph Company filed an application with the Public Utilities Commission of the State of California for authority to increase rates for telephone service on a state-wide basis by an amount estimated at \$44,000,000 annually. This was later increased to give the company \$47,504,000 annually. For the San Francisco zone it is estimated the increase will be on an annual basis \$3,476,000 exclusive of increases in toll charges. Among other increases it is proposed to increase one party residence flat from \$5.05 to \$5.85, two party residence flat from \$3.95 to \$4.50.

Hearings on the application were held in San Francisco on April 29 and 30, and on May 1, and in Los Angeles on May 6, 7 and 8. Further hearings were held at San Bernardino, Sacramento and Santa Cruz. At the opening hearing and prior to the introduction of the company's direct testimony Dion R. Holm, City Attorney for the City and County of San Francisco, made a motion to dismiss on two grounds: (1) the application did not state sufficient grounds to support the granting of the increase in rates sought, and (2) that the application of the company did not comply with the rules of procedure of the Public Utilities of the State of California in effect at that time.

The presiding commissioner took the motion under submission and no ruling has been made to date.

The Company's direct testimony indicated that the request for an increase in rates had been brought about by the effects of inflation and the desire that rate of return on its investment be increased. In the last rate proceedings the Commission allowed the company a rate of return of 5.6%. The company is at this time asking that the rate of return be increased to 7%. It should be pointed out that a 1% decrease in the rate of return asked for by the company would decrease the gross revenues about \$17,500,000 annually. Cross-examination on the company's direct presentation has been tentatively set for December 16, 1953.

A request for a stenographer and an engineer to assist Mr. Paul L. Beck in the preparation of cross-examination and the services of a consultant to testify on a proper rate of return has been approved by the Mayor's office and now is before the Board of Supervisors for further consideration.

GAS

No increase in gas rates was requested by the Pacific Gas & Electric Company during the fiscal year 1952/1953 and the earnings of the company for the 12 months ending June 30, 1953 were at the rate of \$2.32 a share and in the words of its President, James Black, the earnings of the company as a whole seemed to be satisfactory, for he states in his letter to stockholders of August 4, 1953, "From the standpoint of both operations and finances the company's condition is as good, if not better than at any time in its long history. The immediate outlook continues favorable."

The Pacific Gas & Electric Company has increased the dividend on common stock which has been paid at the rate of \$2.00 a share for the past seventeen years to a basis of \$2.20 a share to stockholders of record of September 15, 1953.

The use of natural gas in Northern California has increased to such an extent that it has been necessary for the Pacific Gas & Electric Company to import more and more natural gas from Texas and New Mexico. The sources of natural gas available in California are not sufficient to meet either the average daily or the peak day firm requirements of the Pacific Gas & Electric Company's customers. The facilities of the Pacific Gas & Electric Company connected to the El Paso Natural Gas Company pipe line are capable of delivering 550 million cubic feet a day at the present time.

During the month of June 1953 California gas used by the company amounted to about 200,000,000 cubic feet a day, while imported out of state gas used amounted to 430,000,000 cubic feet a day, or stated in other words, two-thirds of the gas distributed by the Pacific Gas & Electric Company to Northern California during the month of June, 1953 was imported from out of state. The company applied to the Federal Power Commission and was granted a certificate to increase the import of out of state gas by 150 million cubic feet a day, bringing this to a total of 700 million cubic feet a day. A hearing on the application before the California State Public Utilities Commission at which this office was represented was held during the month of August and the approval of the application is expected in the near future as the testimony by company's witnesses was in no way impaired by cross-examination. The gas is necessary for the consumers in the City and County of San Francisco.

The State Public Utilities Commission through its staff invited

all gas utilities in California and representatives of the cities of Los Angeles, Oakland and San Francisco, to serve on a "temperature adjustment committee." Mr. Paul L. Beck of this office is serving on this committee. The first meeting of this committee was held on February 25, 1953 in the State Building, San Francisco. The purposes of this committee was to explore the possibility of establishing a standard procedure for the adjustment of gas revenues and expenses to average temperature conditions for use in rate case proceedings. A sub committee was formed and the work has proceeded to such an extent that it is believed "a standard correction" agreeable to all parties on the committee will be the result of the committee's studies.

ELECTRIC

On October 16, 1952 the State Public Utilities Commission authorized the Pacific Gas & Electric Company to increase various electric rates. The company had requested a total annual increase in its gross revenues of \$45,704,000. The Commission granted increases amounting to \$32,990,000. The company asked for a rate of return of 6% on a depreciated rate base. The Commission allowed a rate of 5.55%. During the course of the hearing the company had asked for an interim increase in rates. This office argued that an interim increase should not be allowed and was upheld by the Commission. The significant highlight of the decision was that after a series of conferences participated in by the staff engineers of the Commission, the City and County of San Francisco, and the company, an agreement was entered into by the company to change its method of accumulating depreciation reserves to the "remaining life" method. The effect of this was to reduce the revenue requirements of the company by \$4,000,000. The Commission upheld the position of the City and County of San Francisco that three old retired steam electric generating plants should be excluded from the rate base. The company claimed they should be included in the rate base at an estimated figure equal to one-half of the original cost of the plant.

Practically all customers received an increase in rates which included rates for street lighting in the City and County of San Francisco and resale rates to the City and County of San Francisco for power resold to the Kaiser magnesium and cement plants. Taking all the factors into consideration in rate making, it is the considered opinion of this office that the rate increases in street lighting and resale power are very favorable to the City and County of San Francisco.

The State Public Utilities Commission has from time to time continued its hearings to determine "the available supply and demand for electricity." It is interesting to note that the company is now installing single steam electric generating units, each having a capacity of 125,000 kilowatts.

TRANSPORTATION

The Key System Transit Lines, on May 23, 1953 filed an application before the State Public Utilities Commission for an increase in fares between San Francisco and the East Bay and also for its local operations in the East Bay. San Francisco's interest, of course, is only in the trans-bay phase of the application, since approximately 16% of the trans-bay commuter traffic originates in San Francisco, and moreover, the Key System buses use the streets of San Francisco. Since the prolonged strike, which has been in progress for over forty-eight days, no date for a hearing on the application has been set. On November 10, 1952 the Board of Supervisors by resolution expressed itself as opposed to the abandonment of train service on the "M" and "D" Key Transit Lines, for which the company desires to substitute buses. This office appeared in opposition to the abandonment of trains on the bridge, hearings on which began July 16, 1953, although the studies to determine what facts, witnesses and exhibits were presented at the hearing were prepared during the fiscal year 1952-1953.

As stated in my report for the fiscal year 1951-1952, Mr. Paul L. Beck of my office made a revenue estimate of the results that would obtain on the Municipal Railway under a fifteen cent fare for the fiscal year 1952-1953. Mr. Beck's services were requested by Controller Harry Ross to check an estimate made by Mr. Harmon D. Mills, Traffic Consultant, to the San Francisco Public Utilities Commission. Mr. Mills had estimated that for the fiscal year 1952-1953, 160,060, 734 adult passengers would be carried. Mr. Beck estimated that the adult passengers that would be carried for the fiscal year 1952-1953 under the fifteen cent fare as 148,689,000.

The results of the traffic carried during the fiscal year 1952-1953 are now a matter of record and they indicate that the actual adult passengers carried were 150,233,000. In other words, Mr. Beck's estimate was within approximately one percent of the actual results.

Honorable Elmer E. Robinson
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INTERESTING CASES

Several cases have been completed during the last year in various fields of municipal government other than those mentioned which are worthy of special note.

CALIFORNIA TOLL BRIDGE AUTHORITY, ETC. v. KUCHOL, ETC.,
(City and County of San Francisco, Intervenor)
California Supreme Court, Sacramento No. 6319;
40 A.C. 43.

By original proceeding in mandate the Toll Bridge Authority sought to have the Supreme Court validate the intended plan of the Authority to extend the approach system on the Bay Bridge by expending \$50,000,000 of contemplated bond money, such bonds to be redeemable from tolls of said Bay Bridge. An alternative writ was issued. The City Attorney, Dion R. Holm, petitioned for leave to intervene, which permission was granted. The City's complaint in intervention was by way of demurrer and answer, as was the return of the respondent Kuchol. The decision of the Supreme Court, in effect, amounted to a sustaining of the demurrers of the City and Kuchol - that is, it held that the Authority lacked power to issue bonds to finance additional approaches to the Bay Bridge.

THE ROSENBERG CASE

EUGENE EAGLE v. CITY AND COUNTY OF SAN FRANCISCO,
California Supreme Court, San Francisco No. 16749;
Superior Court No. 424002.

In this case a group calling themselves "The Committee to Save the Rosenbergs" made application for, and was refused, use of a hall in the Civic Auditorium to hold a rally in protest against the judgment and conviction and pending death sentence against atomic spies Julius and Ethel Rosenberg. The committee, by Eagle, filed an original proceeding in mandate in the Supreme Court. The City Attorney, Dion R. Holm, filed opposition thereto and the Supreme Court refused, without opinion, to issue the alternative writ.

The Committee then filed a similar petition in the Superior Court, and an order to show cause issued, returnable on January 13, 1953. On January 12, 1953 the petition was voluntarily dismissed by the petitioner. The reason for such dismissal was never made known to this office, but the same points of law were urged in the Superior Court as were urged in the Supreme Court.

HEWLEY AND FREDY V. MURPHY,
Supreme Court, San Francisco Nos 18674,
18675 and 18676;
40 A.C. 575.

This case involved the question of the failure to provide in the budget estimate of the Sheriff's Department any money to continue the positions of Superintendent of Jail. The Sheriff, acting under the authority of section 20 of the charter, which states that he "may reduce the forces under his jurisdiction to conform to the needs of the work for which he is responsible, any other provision of this charter to the contrary notwithstanding," failed to include any money to continue these positions for the fiscal year 1947-48. The petitioners secured a judgment in the trial court, which was reversed by the District Court of Appeal, and in April of 1953 after a hearing having been granted by the Supreme Court, the Supreme Court affirmed the decision of the trial judge and ruled that while a department head had the authority contained in section 20, all the other requirements of the charter regarding civil service rights must be followed in the exercise of that authority.

SIDEWALK CASES.

The City Attorney has successfully fought the tendency of juries to give large awards in this type of case. A rundown of the last year's activities in regard to sidewalk cases indicates that this effort has been quite successful. Of 45 cases tried or settled during the fiscal year, the amounts claimed were \$689,012 and the amount paid out, either by judgment or settlement, was \$43,510.

REDEVELOPMENT AGENCY.

In June, 1953, the Redevelopment Agency sought a writ of mandamus to compel the chairman of the Agency to execute with the Federal Government contracts for loans and capital grants from the Federal Government with which to carry out the Diamond Heights and Western Addition redevelopment projects. Since the chairman refused to execute these contracts, the pending litigation has resulted in a test of the constitutionality of the California Community Redevelopment law. Two deputy city attorneys have spent much time in connection with the preparation of the aforesaid mandamus suit and subsequent research necessary to prepare it for trial. This suit was filed in the Supreme Court of the State of California, but was transferred on order of the Supreme Court to the District Court of Appeal for hearing.

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September 11, 1953
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As in previous years this office rendered all the legal services required by the Agency, as well as having a deputy in attendance at all meetings and hearings of the Agency. In addition, this office prepared various types of contracts, agreements, Agency resolutions, resolutions and ordinances for the board of supervisors, as well as memoranda of law and opinions applying to the miscellaneous legal problems which the Agency from time to time has been confronted with. Since February 15th a deputy has been specially employed and assigned only to Redevelopment Agency problems.

PARKING AUTHORITY

In connection with the authority, a Deputy City Attorney was assigned to attend all its general and special meetings. The City Attorney prepared contracts, agreements, leases, Authority resolutions, ordinances and resolutions for the Board of Supervisors, reviewed proposed documents and counseled the Authority at its request. The leases for the St. Mary's Square Garage and the Mission Bartlett Parking Plaza were prepared by the City Attorney.

PUBLIC WELFARE DEPARTMENT

OLD AGE ASSISTANCE - RESPONSIBLE RELATIVE CONTRIBUTIONS.

The Public Welfare Department refers to the City Attorney's office for prosecution all cases where responsible relatives are financially able to aid the indigent parent applying for old age assistance and who refuse to agree with the Public Welfare Department to pay under the scale set out in the Welfare and Institutions Code, or who neglect to respond to inquiries concerning their ability to pay. Approximately twenty such situations are handled per month. When there is a persistent refusal, suit is then filed by the City Attorney's office and brought to trial. In 1952-1953 eighteen such cases were filed. The office of the City Attorney devotes much attention to these matters to the end that the interests of both the taxpaying public and the private citizen shall be protected with understanding, fairness and justice. Thirty-seven creditor's claims have been filed against the estates of deceased persons who received indigent aid from the city and county during their lifetime.

WORKMEN'S COMPENSATION LITIGATION.

Under section 172 of the charter of the City and County of San Francisco, the retirement system administers the benefit provisions of the Workmen's Compensation laws of the State of California. Whenever a hearing is required by the Industrial Accident Commission of the State of California, the City Attorney's office represents the city and the employee's retirement system in that hearing. The hearings usually fall into two categories:

- (1) The city denies liability for alleged injuries of an employee, or
- (2) The city contests the amount of disability alleged.

Throughout the year hearings occur about four times a month. The City Attorney also prepares the necessary legal papers and documents objecting to adverse decisions.

Under the laws of the State of California the city has a right of subrogation against any third party who causes an injury to a city employee in the course and scope of his employment. This right is for the amount which the city has expended for the employee because of his injuries.

A recent survey has disclosed that for the year there were 87 claims for industrial injuries involving a question of third party liability. The City Attorney assists in the collection of these claims either by suit or settlement.

CONTRACT PREPARATION AND APPROVAL

Innumerable contracts have been prepared by the office of the City Attorney that cover all activities of the city in both its proprietary and governmental capacity. Some of these are for public works; others are for the engagement of experts; others are for the furnishing of supplies and equipment, under competitive bid, and still others relate to transactions between the City and County and the United States or the State of California.

LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

As the legal officer in the vast civil business of the city government, the City Attorney has been required to advise its various departments and agencies on legal questions concerning not only the welfare of its citizens, but many millions of dollars in property values. Some of this advice has been informal, whether written or oral. The complication of many questions, however, has required extensive legal research and the issuance of formal legal opinions. Such opinions have frequently been upon subjects quite new and different, upon which prior opinions of the courts throw little light. Such formal opinions have numbered 141 during the last year. They are comparable to several volumes of the work of the appellate courts.

SOUTHERN CROSSING

With the enactment of the so-called "Dolwig Bill" by the State Legislature the City Attorney has been engaged in a number of conferences with city, county, state and federal officials relative to the obtaining of the necessary rights and permits to construct the Southern crossing from San Francisco to Alameda. This has required the City Attorney to proceed to Washington and appear before committees of the House of Representatives and Senate, where he was successful in passing the necessary federal legislation to guarantee the financing of the construction of the Southern crossing. This matter was not settled during the fiscal year under consideration and will appear in greater detail in the report furnished to Your Honor for the next fiscal year.

C O N C L U S I O N

In conclusion, I must make the comment that it is impossible in a summary of this sort to report fully upon the many ramifications of the daily work of this office. I have sought in this report to mention totals where possible, and highlights where of special interest, but must rely upon your own personal knowledge of much of the work of this office to indicate to you its widespread nature and tremendous total content of accomplishment.

Again in the report I feel it is my duty to reiterate the two urgent requests made in the 1951-1952 report.

The first had to do with the inadequacy of the quarters in which the City Attorney's office is now located. The hallway of the City Hall proper has been blocked off on the entire southeast portion of the building and is now used for office and library facilities. It is used as an entrance and waiting room, for the location also of the law clerk, bookkeeper and for the operation of the telephone exchange. It is also used as a library. Because of

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The distracting character of these office operations, the use of the facilities as a library is made very difficult. There is no ventilation in the area. Artificial light is relied on entirely during the day. Because of the hope that more ample space may be provided at some time in the future, it does not seem worthwhile to spend public funds for the installation of costly air conditioning equipment. Many of the private offices of the attorneys have no windows and are unsuitable for the purpose for which they are used. At least five attorneys have no private office. The offices of half of the attorneys can be reached only by passing through the offices of other attorneys. This situation interferes greatly with the interviewing of witnesses and sometimes even with the taking of depositions.

The main stenographic room is small. Seven stenographers, constituting the greater portion of the stenographic department, do their work in this wholly inadequate space. Necessarily this important work is at times done under great difficulties. I therefore urgently request that consideration be given to more adequate quarters for the performance of the work of the City Attorney.

My second urgent request is brought about by the increase of work which the office is performing. In the very recent past, the City Attorney has become the legal officer of the Parking Authority, the Redevelopment Agency, Health Service and the Civil Defense Department of the city government. Each of these departments requires in its work more services than a great number of the city departments which have been in existence for many years.

Many attorneys for legal departments of other cities express themselves as astounded at the limited staff of the City Attorney's office in San Francisco. It is not a saving in the long run to the taxpayers for an important city department such as that of the City Attorney to be understaffed. For several years I have requested additional deputies. These requests have not been successful. I believe that the office should have five more lawyers as permanent deputies in order to accomplish its work fully, and that a position of librarian-file clerk should also be created. I have submitted in the past statistics showing the more adequate staffing of offices of City Attorneys in comparable municipalities. I trust that the additional staff and facilities may be viewed in the light of accomplishment to save funds for the taxpayers and rate payers in San Francisco, and that these requests may be given careful attention.

Respectfully submitted,

DEON R. HOLM, City Attorney.

WALKER PEDDICORD
CHIEF DEPUTY CITY ATTORNEY

EDMOND P. BERGEROT
CHIEF TRIAL DEPUTY

DEPUTY CITY ATTORNEYS

NORMAN SANFORD WOLFF
LAWRENCE S. MANA
JOSEPH F. MURPHY
C. WESLEY DAVIS
VIRL BENNEHOFF
EDWARD I. FITZPATRICK
BERNARD J. WARD
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THOMAS J. BLANCHARD
WILLIAM F. BOURNE
EDWARD F. DULLEA
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LOUIS T. KRUGER

DION R. HOLM
CITY ATTORNEY
CITY HALL
SAN FRANCISCO 2, CALIFORNIA
HEMLOCK 1-1322

September 17, 1954

THOMAS M. O'CONNOR
PUBLIC UTILITIES COUNSEL

DEPUTY CITY ATTORNEYS

THOMAS A. TOOMEY, JR.
JEROME COHEN
AGNES O'BRIEN SMITH
FRANK J. NEEDLES
MORLEY GOLDBERG
RICHARD SAVERI
GEORGE P. AGNOST
WILLIAM E. MULLINS
ROBERT M. DESKY
SAMUEL E. YEE
RAYMOND J. REYNOLDS
EARL F. HEDLUND

PAUL L. BECK
CHIEF VALUATION AND
RATE ENGINEER

Honorable Elmer E. Robinson
Mayor of San Francisco
City Hall
San Francisco 2

Dear Mayor Robinson:

I respectfully submit the following report to you describing some of the activities of the office of City Attorney for the fiscal year 1953-1954.

In doing so it has been my endeavor to avoid details in respect to the manifold activities of this office, and to give you, so far as possible, a general summary of the services rendered.

LITIGATION DEPARTMENT

The litigation work of the office is divided generally into that which is strictly of a municipal character and that relating to legal affairs arising out of the City's activities in its proprietary capacity.

Municipal Railway

In the latter group the Municipal Railway causes the greatest volume of litigation. The following table illustrates the work done for that department in the field of litigation during the last fiscal year:

Actions filed,	376
Actions tried, settled or dismissed, . .	421
Actions pending at end of fiscal year, .	655
Claims filed in City Attorney's office, .	934

In addition to the foregoing, 654 non-litigated cases, in excess of \$100.00, were settled by the Public Utilities Commission after the rendition of services in regard thereto by this office. In respect to each of those claims, a review was made in this office and advice given as to settlement. Written approval of the settlement was given to the Public Utilities Commission and to the Controller; releases and other closing documents were also approved in each instance.

Representation was also given to numerous street car and bus operators at coroner's hearings and hearings in the Criminal Division of

the Municipal Court where facts involved in the proceedings were related to substantial damage actions against the City and County of San Francisco.

Six hundred and fifty-five (655) railway damage actions are now pending against the city and county. The total amount prayed for is the sum of \$16,002,889.00.

Other Departments

With reference to departments other than the Municipal Railway, 263 actions were filed in the last fiscal year. Many of these actions related to eminent domain, a number to the work of the Police Department, Department of Public Works, Retirement Board and Civil Service Commission; others related to the Airport, the Water Department, the Fire Department, the Health Department, the Sheriff's office, the Recreation and Park Department, the Juvenile Court, the San Francisco Unified School District, Tax Collector, and a few to other city offices and departments. There were numerous proceedings also, in which it was necessary to represent the city or its officers, in which there was sought declaratory relief, writs of mandamus, prohibition, injunctions or orders to show cause. As always, numerous McEnerny actions were filed and determined.

Actions tried, settled or dismissed,
exclusive of McEnerny actions,
eminent domain actions or special
proceedings, 188

Actions pending at end of fiscal year, . . . 578

Claims filed against all departments
other than Municipal Railway, 609

During the last fiscal year, it is noteworthy that a total of 101 jury cases, involving all departments of the city and county, were tried by this office in the San Francisco Superior Court. In many cases a single one of these trials would require from a week to ten days. On many occasions as high as six jury cases, in which the city was involved, were assigned by the court to commence on a Monday morning. A very large percentage of the Superior Court jury trial work of the city and county is done by this office. More than one downtown office, which tries only a small fraction of the number of cases that this office does, has a larger personnel. This figure does not, of course, include either Municipal Court cases, whether tried before a jury or before a judge only, or Superior Court cases tried before a judge without a jury.

Appellate Work

With the tremendous volume of litigation handled by the office of the City Attorney, as outlined above, it would naturally be expected that a large number of appearances would be made before the appellate courts of California and of the United States. During the fiscal year there were 31 appearances by this office before the District Court of

Appeal and the Supreme Court of the State of California, and the Ninth Circuit of the Circuit Court of Appeals of the United States.

PUBLIC UTILITIES DEPARTMENT

The Public Utilities Department of this office suffered a great loss in the month of October, 1953, in the death of A. Del. Thomson, Public Utilities Counsel, who had served in that position for approximately four years prior thereto. Thomas M. O'Connor was appointed to succeed Mr. Thomson, and additionally two attorneys were appointed to the staff for Public Utilities matters because of the great increase in the work of this department.

Water Department

The City has filed 14 suits against various consumers of the Water Department. These consumers had entered into a contract with the Spring Valley Water Company, which accorded them special rates, in exchange for rights of way or transfer of water rights. The City seeks to attack the validity of these special contract rates and have these consumers pay for the consumption of water on the basis of special rates and charges of the water department. The test case in this series of actions has now been tried in the Superior Court of the City and County of San Francisco, and is now pending a decision by the Court. One other case has been settled in accordance with the position taken by the City in connection with these cases.

Airport

The case of Trans World Airlines, Inc. v. City and County of San Francisco was tried in the U. S. District Court during the fiscal year. This was a suit in declaratory relief and was instituted by Trans World Airlines, Inc. against the City. In the suit, the City sought to enforce rates established by the Public Utilities Commission for common use facilities, as prevailing over the terms of the lease. The position of the City and County that the airport constituted a public utility and therefore subject to the rate making power of the Public Utilities Commission was upheld by Judge Michael J. Roche in an opinion which is reported in 119 Fed. Supp. 516. The action also resulted in a judgment in favor of the City in the sum of \$95,942.64, which represents the difference between the contract rate and rates established by the Public Utilities Commission for the use by Trans World Airlines, Inc. of common-use facilities at San Francisco International Airport for the period from December 31, 1950 to February 28, 1954.

Trans World Air Lines, Inc. has appealed from this decision to the United States Court of Appeals for the Ninth Circuit and the matter is now pending. This case is not only of great importance to our City but the result will affect all cities in the nation operating an airport.

Another accomplishment has been the drafting of numerous leases for airline tenants and business tenants in the New Terminal Building.

Municipal Railway

The important case of Gowanlock v. City and County of San Francisco involving the claim on behalf of the Municipal Railway platform men and bus operators, that each of the employees of this type is entitled to a guarantee of an eight-hour day and concomittant pay therefor was decided by the Supreme Court of the State of California on February 24, 1954 (Gowanlock v. James Turner, et al., 42 Cal. 2d 296). The decision of the Supreme Court of the State of California sustains the position of the City and County and holds that there is no guarantee of eight hours work to platform men and bus operators under the provisions of either Section 125 or Section 151.3 of the Charter of the City and County of San Francisco.

RATE DEPARTMENT

During the fiscal year 1953-1954, this Department participated in formal and informal hearings before the Public Utilities Commission of the State of California, as well as making a report to the Board of Supervisors on taxicab rates.

The principal formal hearings during the year were held before the Public Utilities Commission of the State of California on the applications of The Pacific Telephone and Telegraph Company for increased telephone rates and the application of Pacific Gas and Electric Company for authority to increase the importation of natural gas from 550 million cubic feet to 700 million cubic feet a day from Texas. Another important gas hearing was held before the Federal Power Commission in Washington, D. C. as to whether a supply of natural gas for Seattle; Washington and the Pacific Northwest should be obtained from the California reserves in Texas or should be imported from Canada.

I also worked on and filed a brief, as amicus curiae, (United States Supreme Court) in the Phillips Oil litigation. The court upheld our position that the Federal Power Commission had the power and duty to fix rates for natural gas charged by producing companies.

Telephone

On December 10, 1952, The Pacific Telephone and Telegraph Company applied for authority to the State Public Utilities Commission to increase telephone rates statewide in the amount of \$44 million. This was subsequently increased to in excess of \$53 million. For the San Francisco zone, it was estimated that the increase on an annual basis would amount to approximately \$3-3/4 million. The Company's final application requested that business telephones in San Francisco be increased \$2.25 a month and residence telephones from 65 cents to 95 cents a month.

Hearings on this application consumed 51 days. Parties to the proceedings presented 102 witnesses who introduced 147 exhibits and those

testimony covered 6,851 pages of transcript.

The Company asked for a rate of return of 7-1/2%. The City and County of San Francisco presented a witness on rate of return whose recommendation was that the rate of return should not be in excess of 6-1/4%.

On July 6, 1954, the Commission handed down its decision. The Company was allowed a rate of return of 6-1/4%.

No increase in the above-mentioned rates requested by the Company was allowed in San Francisco.

Gas

On March 18, 1954, the Pacific Gas and Electric Company requested authority to increase its natural gas service approximately \$7-1/4 million annually on a system-wide basis. This was to offset an increase in the cost of out of state gas from Texas to the Pacific Gas and Electric Company. The increase requested by the Company would increase the cost of gas to the domestic consumer in San Francisco by approximately 6.3% a month.

The Company was granted authority to enlarge its 34-inch natural gas pipe line in order that it could import from Texas an additional 150 million cubic feet of gas a day to serve the needs of the Company's system. This, when completed, will increase the capacity of the Company's line to 700 million cubic feet a day, which means that of the total gas sold by the Pacific Company 60% of this gas is brought in from Texas and New Mexico gas fields.

This Department also appeared before the Federal Power Commission in behalf of the application of Westcoast Transmission Co., Inc. to supply the needs of Seattle and the Pacific Northwest with natural gas, and in opposition to the application of Pacific Northwest Pipe Line Corporation to supply the same area with gas from the San Juan Basin in New Mexico from which the Pacific Gas and Electric Company receives 400 million cubic feet of gas a day for use in the San Francisco Bay Area.

Transportation

The Key System Transit Company was allowed an increase in fares on its transbay service due to increased costs of operation and diminishing traffic.

On May 28, 1954, the Key System applied for an additional fare increase. Hearings were held during the month of July, 1954, but no decision as yet has been handed down.

During the fiscal year 1953-1954, the Key System asked permission to abandon the A and B train lines across the San Francisco-Oakland Bay Bridge and substitute therefor motor vehicle service. This office vigorously opposed the application of the Company and presented 5 witnesses. The State Public Utilities Commission denied the Company's application.

Pacific Greyhound Lines applied for drastic increase in commuter rates between San Francisco and Marin County.

Hearings have been held on this application. The testimony showed that the Company, under its present rates, was operating at a loss and that even after the increase in rates requested the Company would continue to operate this service at a loss.

Taxicab Rates

During the fiscal year 1953-1954, this Department, in conjunction with the Controller's Office, made a report on the result of taxicab operations. No change was made in taxicab rates.

REDEVELOPMENT AGENCY

On January 29, 1954, the District Court of Appeal rendered its decision in the case of Redevelopment Agency vs. Hayes, et al. In a lengthy and well reasoned opinion, the Court upheld the constitutionality of the California Redevelopment Law as it applies to both slum and blighted areas, and ordered the issuance of a writ of mandate commanding Dr. Hayes, Chairman of the Agency, to execute the contracts for the Diamond Heights and Western Addition projects.

The Supreme Court of the State of California denied the petitions of Dr. Hayes and the intervenors for a hearing before said Court.

The intervenors have filed a petition for writ of certiorari in the Supreme Court of the United States, seeking a review of the decision in so far as it applies to the Diamond Heights project. Extensive briefs have been filed and the matter should come before the United States Supreme Court in October.

This office has rendered all the legal services required by the Agency and has had a deputy in attendance at all meetings and hearings of the Agency. In addition, this office has prepared and reviewed various types of contracts, agreements, agency resolutions, resolutions and ordinances for the Board of Supervisors, as well as memoranda of law and opinions applying to the legal problems with which the Agency from time to time has been confronted. This office has also assisted in the preparation of the plans for both the Diamond Heights and Western Addition and all the documentation in support of such plans.

PARKING AUTHORITY

In connection with the Parking Authority, the City Attorney rendered the following legal services: prepared drafts of lease forms, bids, and invitations for bids for the following parking facilities: Ellis-O'Farrell, Commerce High Playfield, Fifth and Howard, and Minna and Natoma; prepared resolutions for the Parking Authority and the Board of Supervisors designating said sites as well as Lakeside Village and North Beach as sites for public off-street parking facilities; rendered numerous opinions relative to Parking Authority questions; and attended regular and special meetings of the Parking Authority; and quieted title to St. Anne's Street for the St. Mary's Garage.

The case of City and County of San Francisco v. Ross was filed in the Appellate Court of our State for a petition for writ of mandate to certify funds for the acquisition of the Ellis-O'Farrell site. The District Court of Appeal denied the petition for writ of mandate, but a hearing was granted by the Supreme Court, so the case is presently pending and was argued the day prior to the date of this report.

The case of City and County of San Francisco v. Ross is of great importance to the City and to the State of California as it is a case of first impression on such questions as whether a City may acquire land by eminent domain for parking purposes and then lease it to a private operator to carry out the public purpose; as to whether a City may have a public garage containing a few retail stores; and as to whether a public parking facility is a public purpose or a business affecting the public interest. The future development of parking facilities under the parking program of the City and County of San Francisco may well depend upon the ultimate decision of the Supreme Court in the case of City and County of San Francisco v. Ross.

SOUTHERN CROSSING

In the annual reports of the City Attorney for the past two years you have been advised as to the status of the Southern Crossing of San Francisco Bay.

I am happy to report that during the year 1953/1954 the City was successful in securing the necessary legislation from Congress to guarantee the financing of the construction of the Southern Crossing, and additionally secured approval from the Navy Department as to the location of the Southern Crossing. Two trips to Washington, D.C. were necessary by the City Attorney to properly present the City's program as to the Southern Crossing before the Congress of the United States and the Secretary of the Navy, and I am happy to report that the City and County of San Francisco was successful in achieving all of its objectives despite vigorous opposition at all times from opponents of the Southern Crossing. Presently plans are under way for the actual construction of the Southern Crossing across San Francisco Bay.

SIDEWALK CASES

The City Attorney has successfully fought the tendency of juries to give large awards in this type of case. A rundown of the last year's activities in regard to sidewalk cases indicates that this effort has been quite successful. Of 62 cases tried or settled during the fiscal year, the amounts claimed were \$1,159,151.00, and the amount paid out, either by judgment or settlement, was only \$67,122.56.

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JUVENILE COURT

At the request of the Judge of the Juvenile Court and the Chief Probation Officer, I have this year assigned a deputy to assist the Juvenile Court with legal problems arising in that department, particularly in the following matters:

Contested child abandonment proceedings,

and

Contested actions involving paternity
of children.

Heretofore in such actions the Juvenile Court Department had no legal representation in such contested matters, and was under a terrific handicap.

WORKMEN'S COMPENSATION LITIGATION

Under section 172 of the charter of the City and County of San Francisco, the retirement system administers the benefit provisions

of the Workmen's Compensation laws of the State of California. Whenever a hearing is required by the Industrial Accident Commission of the State of California, the City Attorney's office represents the city and the employee's retirement system in that hearing. The hearings usually fall into two categories:

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Throughout the year hearings occur about 4 times a month. The City Attorney also prepares the necessary legal papers and documents objecting to adverse decisions.

Under the laws of the State of California the city has a right of subrogation against any third party who causes an injury to a city employee in the course and scope of his employment. This right is for the amount which the city has expended for the employee because of his injuries.

Claims for industrial injuries involving a question of third party liability are also handled by this office. The City Attorney assists in the collection of these claims either by suit or settlement.

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INTERESTING CASES

Several cases have been completed during the last year in various fields of Municipal Government other than those mentioned above, which are worthy of special note.

Tavis v. City and County of San Francisco,
(California Supreme Court)
43 A.C.A. 190.

This case held that a city by its charter could provide for retroactive benefits for its employees, and established that the right of an employee to a vacation, once having been earned, was a vested right.

Pootel v. City and County of San Francisco,
(District Court of Appeal)
125 A.C.A. 477

This case held that upon separation from city service a city employee could not be paid in cash for overtime accumulated unless the law at the time of the accumulation of the overtime provided that such overtime be paid for in cash.

Holm v. Superior Court
(California Supreme Court)
42 Cal. 2d 500.

This case held that reports of employees of the Municipal Railway required to be made following an accident in which they were involved, and the reports of investigators about the facts of an accident, including all photographs taken, whether taken immediately after the accident or later, which are held by the railway in anticipation of litigation, and which are in fact forwarded to the City Attorney in due course upon the filing of a complaint, and which are held by the City Attorney in confidence, are privileged communications and are not subject to inspection by the opposing party under C.C.P. 1000 but come within the protection of C.C.P. 1881 (2).

This case is of great importance to the City because of the large volume of personal injury litigation and defense work done by the office of the City Attorney, and a contrary decision by the Supreme Court would have made the defense of tort actions against the City and County of San Francisco an almost impossible task.

CONCLUSION

In your request of August 18, 1954 for the annual report from the City Attorney you listed six items on which you desired specific information. The following is the reply to the six matters referred to:

(1) Comment on the progress of capital programs.

I believe this matter is inapplicable to our department, so no reply is made thereto.

(2) Suggestions or recommendations with respect to the activities of the department or to City affairs generally.

As to suggestions with respect to the office of the City Attorney, I feel it my duty to reiterate the two urgent requests made in the annual reports made for the years 1951/1952 and 1952/1953.

The first request had to do with the inadequacy of the quarters in which the City Attorney's office is now located. The hallway of the City Hall proper has been blocked off on the entire southeast portion of the building and is now used for office and library facilities. It is used as an entrance and waiting room, for the location also of the law clerk, bookkeeper and for the operation of the telephone exchange. It is also used as a library. Because of the distracting character of these office operations, the use of the facilities as a library is made very difficult. There is no ventilation in the area. Artificial light is relied on entirely during the day. Because of the hope that more ample space may be provided at some time in the future, it does not seem worthwhile to spend public funds for the installation of costly air conditioning equipment. Many of the private offices of the attorneys have no windows and are unsuitable for the purpose for which they are used. At least seven attorneys have no private office. The offices of half of the attorneys can be reached only by passing through the offices of other attorneys. This situation interferes greatly with the interviewing of witnesses, and sometimes even with the taking of depositions.

The main stenographic room is small. Seven stenographers, constituting the major portion of the stenographic department, do their work in this wholly inadequate space. Necessarily this important work is at times done under great difficulties. I therefore urgently request that consideration be given to more adequate quarters for the performance of the work of the City Attorney.

My second urgent request is brought about by the increase of work which the office is performing, placing a great burden both upon the professional and clerical staff.

During the past year and half, three stenographers quit their work because of improper working conditions, and the bookkeeper, who likewise performs his duties at a desk in the corridor, contracts repeated colds. This situation must be rectified.

You were realistic of the situation when our current budget was submitted and recommended additional help. This help was not given us.

With the current work now going on in the office the regular staff is grossly inadequate and ten more experienced lawyers could be kept busy and doing effective work and saving the taxpayers much more than the salaries that would be paid them.

I know it is not practical to obtain this amount of additional help, but I am insisting that the very modest demand that the two deputies now assigned and working under work orders issuing out of the Utilities Department be confirmed for permanent positions; they are already working and the money provided for them in the current budget, and that at least two additional attorneys for general work in this office be provided.

- (3) Comparison of expenditures for all appropriations other than those for personal services, with original budget appropriations for 1953/1954.

In reply to your request for comparative figures as between Budget Requests and annual expenditures, please be advised that our budget requests have in all cases approximated the annual cost or expenditure.

I might point out that in each of the budget requests for the last two fiscal periods we have asked for \$15,000 for our No. 266 Account - LITIGATION AND CLAIMS EXPENSE. In both these years the requested budget allowance of \$15,000 was reduced to \$12,500.

In the 1952-1953 period we asked for and received an additional appropriation of \$3800.00 to complete the year. In the 1953-1954 period we asked for an additional appropriation of \$2500.00. There is at present about \$450.00 available to pay any belated claims against this fund.

If the experience of the past two years continues into this year, it will be necessary to ask for additional funds in this appropriation.

- (4) Comparison of revenues with revenues estimated in budget of 1953/1954.

As the revenues received by the City Attorney's office are very minor, I feel no comment is necessary.

Honorable Elmer E. Robinson
September 17, 1954
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(5) Comments on the previous two items.

I feel no comment is necessary here.

(6) Statistics on work accomplished.

As to the statistics on the work accomplished, those have been set forth in detail in other portions of the report relative to the particular work and particular division of this department.

Respectfully submitted,


DION R. HOLM
City Attorney

156-5-6118

